

Enterprise Group of N.Y. LLC v Franklin

2023 NY Slip Op 32189(U)

June 14, 2023

Civil Court of the City of New York, New York County

Docket Number: Index No. 58691/2017

Judge: Jack Stoller

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

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ENTERPRISE GROUP OF NEW YORK LLC,

Petitioner,

Index No. 58691/2017

-against-

BRADLEY FRANKLIN,

DECISION/ORDER

Respondent.

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Present: Hon. Jack Stoller
Judge, Housing Court

Enterprise Group of New York LLC, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Bradley Franklin, the respondent in this proceeding (“Respondent”), seeking possession of 112 MacDougal Street, Apt. C2, New York, New York (“the subject premises”) on an allegation that Respondent is a licensee whose license has been terminated by the passing of the prior tenant, Peggy Langhirt (“the Prior Tenant”). Respondent interposed an answer with a defense of succession. The Court held a trial of this matter on October 20, 2022, December 5, 2022, and February 27, 2023 and then adjourned the matter for post-trial submissions to May 31, 2023.

The trial record

Petitioner proved that it is a proper party to commence this proceeding; that Petitioner and the Prior Tenant were in a landlord/tenant relationship with one another governed by the Rent Stabilization Law; that the Prior Tenant died; that Respondent remained in possession of the subject premises thereafter; and that Petitioner timely and properly served Respondent with the appropriate predicate notice. A lease between Petitioner and Respondent was submitted into evidence.

Louis Galpern (“the Manager”) testified that he has been managing the building in which the subject premises is located (“the Building”) for about twenty years; that no one else was living in the subject premises when the Prior Tenant died; that his understanding is that Respondent was a caretaker for the Prior Tenant; that after the Prior Tenant died he tried to get into the subject premises; that Respondent said that he was a squatter and that the subject premises was his apartment; that he did not have notice that Respondent was living in the subject premises before the Prior Tenant died; that the Prior Tenant had a discussion that she was going to leave the subject premises for the Prior Tenant’s daughter; and that Respondent never contacted him about repairs or being added to any lease prior to the Prior Tenant’s passing.

The Manager testified on cross-examination that he is involved with rent collections and repairs; that he takes care of “everything”; that he has people who worked for him; that he manages about twelve buildings; that he manages approximately 180 units; that he has owned the Building since the 1980s; that he net-leases the Building to a management company; that he is not the super; that there is no doorman of the Building; that it is not true that he does not know the personal lives of his tenants; that he visited the Building at least 100 times in the two years prior to the death of the Prior Tenant (“the Relevant Time Period”); that he personally saw the Prior Tenant maybe five times in the Relevant Time Period; that he knows what the Prior Tenant looked like; that the Prior Tenant had black hair and was of average height and average build; that he never saw Respondent in the Relevant Time Period; that he had met the Prior Tenant and knew her; and that he does not know other people that the Prior Tenant is associated with.

The Manager testified on redirect examination that he has been a vice-president of the grantee on the deed for the Building since 1998.

Robert Galpern (“the Vice President”) testified that is the Vice-President of Petitioner; that he has been a landlord of the Building since 1998; that he is familiar with the subject premises; that the Prior Tenant had lived in the subject premises before 2016; that no one else resided in the subject premises; that Respondent was not living in the subject premises; that the Prior Tenant never reached out to him to add anyone to the lease; that the Prior Tenant, and no one else, complained about repairs in the subject premises; that he never saw Respondent at the Building; that they tried to get the subject premises; that Respondent said that he was the owner of the subject premises; that the subject premises was not vacant when the Prior Tenant died; and that they started a lawsuit with another attorney.

The Vice-President testified that he has the same duties as the Manager; that he is not the super of the Building; that there is no doorman at the Building; that he went to the subject premises a dozen times in the Relevant Time Period; that he had a friendly relationship with the Prior Tenant; that he probably visited the Building about 100 times in the Relevant Time Period; that he often met the Prior Tenant outside when she was hanging out; that she would call him about a specific problem and he would go into the subject premises; that this happened ten or twenty times; that the Prior Tenant was a thin person of average height, about five-foot-something, with dark hair; that he last saw the Prior Tenant in person a couple of months before she died; that he never saw Respondent at the Building in the Relevant Time Period; that he personally knew the Prior Tenant; that he talked with the Prior Tenant about the Prior Tenant’s daughter; that he thought for sure that the Prior Tenant’s daughter would be the “heir apparent” to the subject premises; and that he does not have personal knowledge of all of the personal relationships of the Prior Tenant.

Respondent testified that he has lived at the subject premises for fifteen years, ten years with the Prior Tenant and five years since the Prior Tenant died; that he and the Prior Tenant started going out when they met; that he had a boyfriend/girlfriend relationship with the Prior Tenant; that the Prior Tenant asked him to move in after a few months; that he had already been staying over for five nights a week at that point; that his relationship with the Prior Tenant was very close; that the Prior Tenant told him about her family and her medical issues; that they went everywhere together, including the library, Kenny’s Castaway’s, a restaurant on Bleecker Street, and Coney Island, which was her favorite place; that the subject premises is a long studio consisting of one big room, with a big closet in the back; that the bathroom is outside in the hallway and shared with two other apartments; that there was one bed for him and the Prior Tenant, which is now for him and there was a bunk bed for the Prior Tenant’s daughter, who would sleep over from time to time; that the Prior Tenant lived at the subject premises from the time that he moved in until the Prior Tenant died; that the Prior Tenant died on December 1, 2016; that the Prior Tenant’s father and he were very close; that the Prior Tenant’s father gave him anything he asked for, like the death certificate or photos of the Prior Tenant when the Prior Tenant was a child; that the Prior Tenant’s father died a couple of years ago; that he spent two days at a hotel in Atlantic City with the Prior Tenant; that he visited the Prior Tenant’s family; that he saw the Prior Tenant continuously unless he was getting prescriptions or groceries or laundry; that taking care of the Prior Tenant was a full-time job by the time of the last years of the Relevant Time Period; that they met at the Back Fence in Greenwich Village on New Year’s Eve; that she had him feel the lumps of her breast cancer; that she said that she was not getting treatment from a doctor; that he started taking the Prior Tenant to a doctor, which became a long-term project; that the Prior Tenant was still vigorous, even with her health problems; that they

went to the park; that the Prior Tenant could really throw a baseball; that in April, after about four months, the Prior Tenant asked him to move in with her since he was always staying there anyway; that he moved in; that before he moved into the subject premises he had moved from Pennsylvania to New York; and that he was living in a temporary room that he rented in Washington Heights.

Respondent submitted into evidence the Prior Tenant’s death certificate, which shows that she died on December 1, 2016. The informant on the death certificate was Jim Williams, who was identified as the Prior Tenant’s father.

Respondent submitted into evidence photographs of him and the Prior Tenant being affectionate at Coney Island in 2007, at a street fair on Macdougall Street, and in a photo booth at Atlantic City; a card showing a photograph of Respondent and the Prior Tenant that says “best friends 4ever” with hearts on it; and a letter that says “I love you forever”. Respondent testified that they went to the library together and she would copy pages out of books and that he recognizes her handwriting from that. Respondent submitted into evidence a note dated September 22, 2007 that said: “I really really appreciate you”; “there are no words or gratitude to and for you”; “I love you, no matter what you say or do! (DON’T EVER LEAVE ME!!!!!!)” with hearts written around it; “I [heart] U For Ever! xxxxxxoooooo!! Be mine as long as you want or need. I surely need you – for – ever”.

Respondent submitted into evidence the Prior Tenant’s bible with her maiden name “Williams” written in it. Respondent testified that the Prior Tenant had a spiritual background. The bible had a note in it reading, “I love you thanks for listenin xxx ooo this is so brad: be good for me and I’ll be good for you”. Respondent submitted into evidence an undated note that said, “Thanks Brad I really do love you. Take Care of OUR Place!!!!!!” “OUR” is written over the

word “my” in the note. Respondent testified that the Prior Tenant wrote that. Respondent submitted into evidence another note that said, “To my dearest most lovely convondont [sic] lover; friend; seeker and beast Love, want and need you babe xxxooo”.

Respondent submitted into evidence a note from the Prior Tenant with a signature on it that resembled her signature on the lease (“the Note”).¹ The Note says, “To please leave Cheryl w/ Brad. I he is a willing + loving man I ever knew We might have a fight over custody but, I don’t care, I know what the best place for Cheryl would be I love Brad very much”. The handwriting on the note resembles the handwriting on the other exhibits. Respondent submitted into evidence an anniversary card that said “with Love 4 ever your my now + then in the future! Baby I love uncondiSally [sic.] you I xx oox”. Respondent submitted into evidence a Christmas card that said, “To Brad my love” and “I love you w/ all my life xx oo”. Respondent submitted into evidence a note saying, “To Daddy My love This is from all yor life ever loved you the most heart ya peg leg! With all of my heart then some more”. Respondent testified that the Prior Tenant jokingly referred to herself as “Peg Leg.” Respondent submitted into evidence a drawing that he testified was a present for him, that said, “To the man I love, Brad w/ all my [heart]! I do truly love you! Peg leg xxoo” and a note saying “a heart, I love you! 4ever Happy Valentine’s Day”. Respondent submitted into evidence a note that said, “to My Best Love, Brad Keep this in Good Condition [heart] u! Peg XXXXOOOO”. On the other side of the note is a photograph of Batman and Robin. Respondent submitted into evidence another note that said, “To Brad eye heart U Peg XXX”.

Respondent testified that he referred to the Prior Tenant as “Peggy” or “Baby”; that when he talked to other people he would refer to the Prior Tenant after a couple of years as his wife;

¹ This Note is Exhibit M in evidence.

that he and the Prior Tenant were never married; that they planned to get married but the Prior Tenant was too weak at the end; that they called the City, but they had to go two days in a row; that he had to carry her to her doctor's appointments at that point and he could not carry her to a non-lifesaving place; that she was vomiting and had headaches; that the Prior Tenant already had horrible medical complications when they first met, to wit, breast cancer and peripheral vascular disease in her legs; that she had to walk with a cane; that she had degenerative disk disease that was painful; that they looked into getting that fused; that the doctor said that could lead to bad results; that as the years went on those conditions worsened; that he took her for a mastectomy, which was upsetting for her; that the last two times they went to Coney Island she could not make it; that after nine-and-a-half years one of the doctors said that he should be getting a caregiver's allowance; that he asked how to do that; that the doctor gave him a number; that for the last two months he got a small compensation; that the Prior Tenant had planned a wedding at the Prior Tenant's father's place; that he had to cook, do laundry and cleaning; that he had to manage all the Prior Tenant's medical contacts and prescriptions and make sure that she took her medication in proper sequence; that she had to urinate eight times a day and he had to monitor that; that occasionally when they came out of a hospital, a nurse would assign a physical therapist or a nurse to come, but the Prior Tenant did not want them in the subject premises and the Prior Tenant wanted him to care for her; that they decided together that if she went into a noncommunicative state that he would want to keep her alive on life support; and that she asked him to be her health care proxy.

Respondent submitted into evidence health care proxies dated September 7, 2012, June 6, 2015, and April 15, 2016. Respondent submitted into evidence a letter from the Prior Tenant authorizing Respondent to receive and transmit her medical records, arrange his doctor

appointments, and pick up her prescriptions. Respondent submitted into evidence Respondent’s and the Prior Tenant’s letter dated October 4, 2011 to a nurse about the Prior Tenant’s medication. The contact phone number for both Respondent and the Prior Tenant is the same number. Respondent submitted into evidence discharge instructions for the Prior Tenant dated May 10, 2011 and June 9, 2015 that Respondent signed. Respondent submitted into evidence documents from the New York Eye and Ear Infirmary for the Prior Tenant dated November 11, 2014, June 1, 2016, and August 29, 2016 that identified Respondent as a person to be notified and further identify him as the Prior Tenant’s husband. A health summary dated October 31, 2016 from the same institution says that the Prior Tenant is single but also identifies Respondent as the Prior Tenant’s husband.

Respondent submitted into evidence a letter dated December 30, 2016 from a pharmacist saying that Respondent was a constant presence taking care of the Prior Tenant, his “beloved wife”, constantly dropping off and picking up the Prior Tenant’s medications and being an advocate for the Prior Tenant’s health and well-being and another letter also dated December 30, 2016 from the Prior Tenant’s doctor identifying Respondent as the Prior Tenant’s caregiver and companion, saying that he was present for all of the Prior Tenant’s appointments and hospitalizations and she witnessed their dedication to each other, much like a married couple, and in fact understood that they intended to be married.

Respondent submitted into evidence a notice of a fair hearing with the Office of Temporary and Disability Assistance (“OTDA”) dated May 5, 2011 listing Respondent as a representative of the Prior Tenant. Respondent submitted into evidence records for the Prior Tenant’s Access-A-Ride dated May 20, 2011 that Respondent signed in one place as a “caregiver” and that otherwise identifies Respondent as a “husband/caregiver”. Respondent

submitted into evidence invoices for the Prior Tenant’s medical care, identifying the Prior Tenant as a patient but they are mailed to Respondent, dated November 16, 2016, December 14, 2016, March 29, 2017, April 26, 2017, September 13, 2017, November 8, 2017, April 25, 2018, and August 23, 2018.

Respondent submitted into evidence a joint account the Prior Tenant and Respondent had with Amazon. Respondent testified that they had their bank accounts linked into one Amazon account; that they could use each other’s cards; and that they both had cards on the account.

Respondent testified that when they first met the Prior Tenant was beautiful; that she sometimes walked with a cane; that by the time she died in 2016, the Prior Tenant weakened and aged; that she was still lovely to him but she did not look the same; that she was debilitated; that she gained weight; that the Prior Tenant’s handwriting was originally sharp and crisp; that she would write pages of notes there; that by the end her handwriting got unsteady as the arthritis set in; that Medicaid and other insurance paid 99% of her medical bills; that he paid the remaining 1% of her medical bills; that he paid her bills because they were like one person; that the Prior Tenant was like his girlfriend and his daughter in one; that his source of income at this time was setting up an ebay store; that Respondent and the Prior Tenant improvised household finances day by day; that they were one economic unit; and that they had a joint account for Best Buy where they got a computer at times. Respondent submitted into evidence a record of a Best Buy account with Respondent’s and the Prior Tenant’s names both on it. Respondent testified that they did not get a joint bank account because it could endanger her Supplemental Security Income (“SSI”); that they purchased a computer, a bed, a cane for the Prior Tenant; that the Prior Tenant asked him to get a twin size bed; and that he does not know why she had him get such a small bed. Respondent submitted into evidence a receipt for a bed.

Respondent testified that they bought food with cash, Supplemental Nutritional Assistance Program (“SNAP”), and God’s Love We Deliver; that in the beginning they shopped for food together, but in the last seven or eight years he did all the grocery shopping; that in the beginning the Prior Tenant would cook; that she was a wonderful cook who made a big turkey on Thanksgiving; that when she weakened she could only microwave things; that he did not apply for SNAP for the Prior Tenant; and that he probably filled out the application for SNAP. Respondent submitted into evidence the Prior Tenant’s application from July of 2015 for SNAP, where Respondent is listed on the application as a household member as a “caregiver”. Respondent signed the application as someone who helped the Prior Tenant with the application.

Respondent testified that they had a parrot, two dogs, and a cat. Respondent submitted into evidence records from the Animal Medical Center records listing Respondent as a secondary owner of the Prior Tenant’s pet.

Respondent testified that the Prior Tenant died in the hospital; that they had been there for a couple of days when she died; that her death was very hard for him; that he went to get vitamins and when he came back there were doctors there and they told him that she died; that he stayed on the gurney with her after she died; that a big security guard had to get him off of her; that he was with a group of cancer survivors; that there was a funeral for the Prior Tenant where the Prior Tenant’s father lives in Hudson; that he took the train there; that the Prior Tenant’s father would pick him up; and that he got cards after the Prior Tenant died. Respondent submitted into evidence two condolence cards he received, one of which said “I can’t even begin to comprehend your grief” and another that referenced “your beloved Peggy.” Respondent also submitted into evidence a holiday card to Respondent and the Prior Tenant sent in December of 2016 and an envelope sent to “Brad + Peggy Franklin” postmarked February 7, 2015.

Respondent submitted into evidence a New York City identification card for Respondent issued on December 1, 2011 listing the subject premises as his address; tax returns Respondent filed for tax years 2014, 2015, and 2016, that he filed as a single person, using the subject premises as his address; a bill from the IRS to Respondent at the subject premises dated August 10, 2015; a jury duty summons addressed to Respondent at subject premises dated October 31, 2016; and bank statements sent to Respondent at the subject premises from August of 2009, November of 2014, January of 2015, May through August 2015, October through December of 2015, and October and November 2016.

Respondent submitted into evidence email exchanges between Petitioner's employees and Respondent. Petitioner's use of the email address on the exhibit was confirmed via a notice to admit. One email dated June 7, 2012 from an employee named "Monica Koz", said "Happy Thursday to Peggy and Brad!!! ... I just wanted to send you a ledger showing the money order from march being credited to you"; one from May 30, 2012 said, "Dear Brad and Peggy, don't worry about the 405\$ [sic.] I found the money order and your account will be corrected with in the next day or so .."; one dated November 14, 2012 from Respondent to Petitioner, said "we paid rent for November ...," garnering a respondent from Petitioner the same day, saying, "I hope you and Peggy are well. If you guys ever need anything contact us at anytime"; one dated January 29, 2013 from Petitioner said "Hello Brad and Peggy, we have the money order but it was just applied yesterday and I did the billing on Friday!"; one dated November 20, 2013 from Respondent to Petitioner, said that someone knocked on his door at 7 pm asking about short-term rentals elsewhere in the building, that Respondent signed off as "Your friends, Peggy and Brad," and a response from Petitioner dated November 21, 2013 said, "I think this is harassment of my clients!"; and finally, in an exchange starting on December 13, 2016 Petitioner expressed

condolences to Respondent and Respondent's response on December 14, 2016 said, "I am heartbroken".

Respondent testified that the Prior Tenant was very close with his father; that his mother was sick in Florida with multiple sclerosis and she never met the Prior Tenant; that the Prior Tenant and his father would always talk on the phone; that his father loved the turkey the Prior Tenant prepared on Thanksgiving; that he was also close with the Prior Tenant's sister and half-sister; that the Prior Tenant's parents passed away; that the Prior Tenant's daughter is named Cheyenne ("the Prior Tenant's Daughter"); that the Prior Tenant's Daughter's husband is named Dave and the Prior Tenant's Daughter's daughter ("the Prior Tenant's Granddaughter") is named Vanessa; and that he visits with them.

Respondent submitted into evidence a Valentine's Day note purportedly from the Prior Tenant's Daughter and her family and a receipt dated February 16, 2013 for a purchase of a cell phone. Respondent testified that the cell phone was for the Prior Tenant's Daughter, when the Prior Tenant's Daughter ran away from a foster care situation to them. Respondent submitted into evidence orders he made from Amazon for burp cloths and wipes, shipped on December 30, 2014 to Union, New Jersey. Respondent testified that this was for the Prior Tenant's Granddaughter when she was born. Respondent submitted into evidence a receipt for food dated August 6, 2014. Respondent testified that this was for the Prior Tenant's Daughter when she was pregnant. Respondent testified that he spent three days and two nights over Thanksgiving at the Prior Tenant's Daughter's house; that the Prior Tenant's Granddaughter is his buddy; and that they made beaded jewelry and paper airplanes and balloon animals.

Respondent testified that he started being paid as the Prior Tenant's caretaker two months before the Prior Tenant died; that he was with her for nine years and eleven months before that;

and that he first became aware that he could get compensated because one of the Prior Tenant's doctors gave him information. Respondent submitted into evidence paystubs for care from October through December of 2016. Respondent submitted into evidence a note from rehab from the Prior Tenant saying that she is making amends with Respondent.

Respondent testified on cross-examination that he has lived at the subject premises for about sixteen years; that he moved into the subject premises in 2007; that before that he lived in a town near the Delaware Water Gap at 308 Castle Rock Acres, Marsh's Creek, Pennsylvania 18335; that he lived on West 86th Street in Manhattan before that; that he met the Prior Tenant New Year's Eve of 2006; that he moved in little by little; that Respondent asked him to move in by April of 2007; that they were very close from the outset; that he was not the Prior Tenant's roommate; that they initially moved in together as boyfriend and girlfriend; that they did not take a lot of photos because he had a really cheap cell phone; that they did not refrain from marrying to preserve their SSI; that they had planned to marry; that you would have had to go to City Hall two times, and she was too weak because of to the doctor; that they did not marry because the Prior Tenant was still legally married to someone who had been violent and abusive and in fact had bene to jail for violating restraining orders; that it was really the last couple of years that she wanted to get married; that he wrote emails to Petitioner trying to be formal because the allegations of nonpayment were upsetting to the Prior Tenant; that he did not request to be added to the lease because he was immersed in the Prior Tenant's health issues; that the Prior Tenant would not have wanted him to not be on the lease; that he is not currently employed; that he collects Social Security; that he called the Prior Tenant's brother and sister-in-law on the Prior Tenant's birthday; that he is in touch with Donna, who is the Prior Tenant's sister; that he is also in touch with Flossie, who is the Prior Tenant's sister; that he did not talk about succession rights

before the Prior Tenant died; that he contacted Petitioner after the Prior Tenant died; that he requested to be added to the lease then; that he remembers the Prior Tenant getting lease renewals; that he did not try to add his name because he is not aware of real estate; that they did not file joint taxes because the Prior Tenant only had SSI; and that a twin sized bed is for one person.

Respondent testified on redirect examination that he did not list every place that he lived before he lived with the Prior Tenant and that he has more photographs and documents if needed.

The Prior Tenant’s Daughter testified that she lived in New Jersey; that the Prior Tenant was her biological mother; that the Prior Tenant was always hugging and kissing her; that she saw the Prior Tenant at least once a month on supervised and unsupervised visits as provided by the Administration for Children’s Services; that they went out for meals or stayed at the subject premises; that the Prior Tenant was her only living relative in New York that she trusted at the time; that she lived in the subject premises from 1995 until she was eleven-and-a-half years old; that Respondent lived with the Prior Tenant; that she met Respondent first around 2009 or 2010 or 2010 around the time that she left the subject premises; that the Prior Tenant introduced Respondent as a boyfriend; that the Prior Tenant loved Respondent; that she talked about Respondent all the time; that the Prior Tenant tattooed Respondent’s name on her chest; that the Prior Tenant tattooed the Prior Tenant’s Daughter’s name on the Prior Tenant’s neck; that the Prior Tenant’s funeral was in upstate New York; that Respondent was there; that she calls Respondent her stepfather; that her daughter, the Prior Tenant’s Granddaughter, loves Respondent; that Respondent is the only family she is regularly in touch with; that Respondent is her stepfather because he and the Prior Tenant loved each other and they all love him; that the Prior Tenant’s Granddaughter refers to Respondent as “Grandpa”; that she last saw Respondent

last month for the Prior Tenant's Granddaughter's birthday; that he did all the party things for the kids; that she has given Respondent gifts on birthdays, Christmas, or Father's Day; that Respondent has given her gifts on similar occasions; that she frequently gets mailings from Respondent; that the Prior Tenant's Granddaughter loves Respondent like a grandparent; that she talks to Respondent more than any other family member; and that Respondent helps her daughter with homework and reads to her.

Respondent submitted into evidence photographs of Respondent with the Prior Tenant's Daughter and a child. The Prior Tenant's Daughter testified that the child is the Prior Tenant's Granddaughter. Respondent submitted into evidence letters that Respondent has written. The Prior Tenant's Daughter testified that the letters were sent to the Prior Tenant's Granddaughter. The letters are designed to tell a child facts about the world. The Prior Tenant's Daughter testified that the Prior Tenant's Granddaughter gets excited every time she received a letter; that the Prior Tenant's Granddaughter insisted on keeping them; that Respondent was a hoarder; and that the Prior Tenant's Daughter cleaned up the subject premises after the Prior Tenant died, with Respondent's help.

The Prior Tenant's Daughter testified on cross-examination that Respondent and the Prior Tenant slept on the bed, which she knew because she had a loft bed; that the subject premises is a studio apartment; that Respondent did not clean up the subject premises because the Prior Tenant was hardheaded about not throwing things away; that she was taken away from the subject premises in 2006; that she was removed because of neglect, as the Prior Tenant was a drug addict; that Respondent's clothes were in the closet; that she went through the closet because she was a curious child; that the photographs were taken within the last year; that the Prior Tenant's Granddaughter is eight years old; and that she tries to see Respondent once a month.

Florence Turek (“the Prior Tenant’s Sister”) testified that she lives elsewhere in New York State; the Prior Tenant is her sister; that she has met Respondent; that she first met Respondent over fifteen years ago; that she probably met Respondent on Christmas; that the Prior Tenant introduced Respondent and the Prior Tenant’s boyfriend; that the Prior Tenant visited with the Prior Tenant’s mother; that the Prior Tenant and Respondent visited her five or six times; that they took a train; that her brother would visit also; that her brother is currently in a nursing home with a stroke; that the Prior Tenant and Respondent would stay with her parents; that Respondent would talk to her parents a lot; that Respondent called her father quite a few times; that her brother and Respondent were always laughing together; that Respondent and the Prior Tenant did not get married because she died; that the Prior Tenant talked with her about getting married in September; that the Prior Tenant’s appearance declined by the time the Prior Tenant died; that the Prior Tenant was an alcoholic; that the Prior Tenant was in poor health for four years before the Prior Tenant died; and that Respondent was at the Prior Tenant’s funeral.

Respondent submitted into evidence the Prior Tenant’s obituary. The Prior Tenant’s Sister testified that she wrote the obituary. The obituary identifies Respondent as the Prior Tenant’s “long-time companion”. The Prior Tenant’s Sister testified that she included Respondent in the obituary because he was the Prior Tenant’s boyfriend and to-be-husband and long-time companion; that Respondent was a part of their family; that Respondent called her right away whenever there was a problem with the Prior Tenant; and that Respondent took good care of the Prior Tenant.

The Prior Tenant’s Sister testified on cross-examination that the Prior Tenant and Respondent had been dating about fifteen years before the Prior Tenant passed; that it had to be before 2010 because her mother died in 2010 and Respondent was there for that; that it had to be

in 2003; that she does not know why they never married before; that Respondent would not come and visit when she did; that she did not visit the Prior Tenant at the subject premises; that she never came to the subject premises; that she never saw Respondent at the subject premises; that anytime she called or he called they were there together; and that she knew they were in the subject premises because of the animals in the background.

The Prior Tenant’s Sister testified on redirect examination that Respondent came to her mother’s funeral out of respect for her parents and to comfort the Prior Tenant.

Magda Gebran (“the Neighbor”) testified that she lives on the same block as the subject premises; that she has lived at her current address since March of 2008; that she got to know the Prior Tenant from the neighborhood around 2009; that they saw each other around the park; that around 2010 she always saw Respondent and the Prior Tenant together in the neighborhood; that Respondent and the Prior Tenant were very close; that Respondent would have his arm around the Prior Tenant’s shoulders when they were walking around; that the Prior Tenant said that Respondent took good care of the Prior Tenant in every way; that Respondent and the Prior Tenant would visit her often, every few months; that in the end when the Prior Tenant was not feeling well they would not come as much; that she did not visit the subject premises; that Respondent lived in the subject premises, which she knew because once the Prior Tenant referred to Respondent as the Prior Tenant’s boyfriend; and that she saw Respondent walking the Prior Tenant’s dog twice a week.

The Neighbor testified on cross-examination that the Prior Tenant said that Respondent was with her all the time and took care of the Prior Tenant; that she saw the way that Respondent helped the Prior Tenant down the stairs; that she did not prepare with Respondent’s attorneys; and that she spoke on the phone with Respondent’s attorneys.

Discussion

In order to prove an entitlement to succeed to the Prior Tenant's tenancy, Respondent must prove that he co-resided with the Prior Tenant for two years before she passed and that he was a family member of the Prior Tenant. 9 N.Y.C.R.R. §2523.5(b)(1). Petitioner's own witnesses testified that the Prior Tenant lived in the subject premises during the Relevant Time Period. Respondent's tax returns placed him in the subject premises during the Relevant Time Period, a significant factor in a determination of primary residency. Second 82nd Corp. v. Veiders, 146 A.D.3d 696 (1st Dept. 2017). The jury duty summons and bank statements placing Respondent at the subject premises during the Relevant Time Period offer more probative evidence of Respondent's residence there as well. 300 East 34th St. Co. v. Habeeb, 248 A.D.2d 50, 55 (1st Dept. 1997), Brg 321 LLC v. Hirschorn, 52 Misc.3d 131(A)(App. Term 1st Dept. 2016). Respondent's testimony that he resided in the subject premises was obviously from an interested party, but both his testimony and the testimony of the Neighbor, a disinterested witness, was consistent with the documentary evidence. The testimony to the contrary of members of Petitioner, who are interested parties, does not outweigh the more objective evidence in the record. 300 East 34th St. Co., *supra*, 248 A.D.2d at 53, Second-82nd St. Corp. v. Vrionis, 2001 N.Y. Misc. LEXIS 943 (App. Term 1st Dept. 2001)(the testimony of an employee of a landlord that a tenant does not live in an apartment is "hardly dispositive" on the issue). The preponderance of the evidence therefore shows that Respondent co-resided with the Prior Tenant during the Relevant Time Period.

Respondent must also prove that he was the Prior Tenant's family member in order to prevail on his succession defense. A "family member," for these purposes, includes any person who can prove emotional and financial commitment and interdependence between such person

and the tenant. 9 N.Y.C.R.R. §2520.6(o)(2). Respondent, of course, testified extensively about his relationship with the Prior Tenant. While Respondent's testimony showed an emotional and financial commitment between him and the Prior Tenant, as noted above, Respondent is of course an interested witness. Evidence of a more objective nature can therefore bear greater probative value.

The key exhibit in this regard is the Note. The Prior Tenant's signature on the note strongly resembles the Prior Tenant's signature on the lease with Petitioner, which is Petitioner's exhibit. The non-signature handwriting elsewhere on the Note resembles the non-signature handwriting on the other notes in evidence. CPLR §4536, Ouziel v. Baram, 305 A.D.2d 564, 564-65 (2nd Dept. 2003), People v. Fields, 287 A.D.2d 577, 578 (2nd Dept 2001), Legale v. Moura, 14 Misc.3d 10, 11 (App. Term 2nd Dept. 2006)(the Court may compare the signature of the authenticated signature with the disputed signature). Respondent has therefore proven that the Prior Tenant wrote the copious amount of notes in evidence which demonstrate an emotional commitment between the parties.

An evaluation of a non-traditional family succession claim is not an exercise of "check[ing] off which factors ... [R]espondent has successfully proven...." Lamarche v. Miles, 234 N.Y.L.J. 88 (Civ. Ct. Kings Co. 2005). As 9 N.Y.C.R.R. §2520.6 (o)(2) specifically states that no single factor shall be solely determinative, "[t]he factors listed in the statute to consider in making the determination, such as sharing expenses and intermingling finances, are merely suggestions and not requirements." Wiener Mgmt. Co. v. Trockel, 192 Misc.2d 696, 703 (Civ. Ct. Queens Co. 2002). "It is the totality of the relationship as evidenced by the dedication, caring and self-sacrifice of the parties which should, in the final analysis, control." Braschi v. Stahl Assocs. Co., 74 N.Y.2d 201, 213 (1989), Matter of 530 Second Ave. Co., LLC v. Zenker,

160 A.D.3d 160, 163 (1st Dept. 2018). With this principle in mind, the Court considers Respondent's other evidence against the backdrop of the bevy of notes from the Prior Tenant demonstrating an emotional commitment to Respondent.

The Prior Tenant and Respondent had a joint account with Amazon evincing at least some mingling of finances. 9 N.Y.C.R.R. §2520.6(o)(iii). The Prior Tenant and Respondent formalized legal obligations between them, evinced by the execution of health care proxies going back to 2012. 9 N.Y.C.R.R. §2520.6(o)(v).² The Prior Tenant and Respondent held themselves out as family members to various medical providers that the Prior Tenant dealt with, through discharge instructions for the Prior Tenant that Respondent signed dating back to 2011 and through documents from the New York Eye and Ear Infirmary for the Prior Tenant from 2014 to 2016 identifying Respondent as a person to be notified and as the Prior Tenant's husband. 9 N.Y.C.R.R. §2520.6(o)(vi). The testimony of two disinterested witnesses, the Prior Tenant's Daughter and the Prior Tenant's Sister, corroborated Respondent's testimony that he cared for the Prior Tenant and developed relationships with the Prior Tenant's extended family. 9 N.Y.C.R.R. §2520.6(o)(vii), Fleishman Realty Corp. v. Garrison, 27 Misc.3d 1202(A)(Civ. Ct. Bronx Co. 2010). To the limited extent that the Neighbor observed the Prior Tenant and Respondent, the Neighbor further confirmed the testimonial evidence. The Prior Tenant's Sister's identification of Respondent as the Prior Tenant's companion in her obituary demonstrates Respondent's standing in the Prior Tenant's family in particular.

² Petitioner objected to the health care proxies on the ground that they were not notarized. However, there is no discernible legal requirement that they be notarized. See Public Health Law §2981(2)(a). Moreover, the health care proxies are admissible as verbal acts that memorialize the Prior Tenant's attempts to formalize her relationship with Respondent. People v. Merante, 59 A.D.3d 207, 208 (1st Dept.), *leave to appeal denied*, 12 N.Y.3d 856 (2009).

Finally, the emails from Petitioner’s employees are particularly striking. From 2012 through the Prior Tenant’s passing in 2016, Petitioner’s employees revealed knowledge that Respondent lived in the subject premises with the Prior Tenant, conveyed and received information about payment of rent with the Prior Tenant and Respondent, and revealed at least some awareness of the emotional commitment between the Prior Tenant and Respondent insofar as Petitioner’s employee expressed the same kind of condolences to Respondent that one would offer to someone suffering the loss of a loved one. These contemporaneous emails starkly contradict the testimony of Petitioner’s owners, that they had no awareness of Respondent’s presence in the subject premises, much less Respondent’s relationship with the Prior Tenant. Notably, Petitioner offered no rebuttal evidence gainsaying this evidence or putting it into context.

Respondent has therefore amply proven that he and the Prior Tenant were non-traditional family members as defined by the Rent Stabilization Code. Accordingly, it is ordered that Respondent prevails on his defense that he is not a licensee of the Prior Tenant but rather entitled to succeed to her tenancy. Therefore it is further ordered that the Court dismisses this proceeding with prejudice.

The parties are directed to pick up their exhibits pursuant to DRP-185 within 30 days.

This constitutes the decision and order of this Court.

Dated: June 14, 2023
New York, New York

HON. JACK STOLLER
J.H.C.

APPROVED
JSTOLLER , 6/14/2023, 9:24:17 AM