

29 Flatbush Assoc. LLC v Medina

2025 NY Slip Op 33971(U)

October 14, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. LT-302279-21/KI

Judge: Sulay K. Grant

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART H

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29 FLATBUSH ASSOCIATES LLC,
Petitioner,

Index No. LT-302279-21/KI

- against -

DECISION/ORDER

MARIA MEDINA ET AL.,
Respondents.
-----X

Present:

Hon. Sulay K. Grant
Judge, Housing Court

Recitation, as required by CPLR § 2219(a), of the papers considered in the review of Respondent’s motion (seq. 6) seeking summary judgment and dismissal and Petitioner’s cross-motion (seq. 7) seeking summary judgment and a final judgment of possession and for any other relief as the court may find appropriate:

Papers	Numbered
Notice of Motion with affidavits and exhibits	NYSCEF Doc. Nos. 65-75
Notice of Cross-motion, with affirmations in support and in opposition with exhibits	NYSCEF Doc. Nos.77-94
Affirmation in opposition and in reply with exhibits	NYSCEF Doc. Nos.95-96
Reply with affidavits and exhibits	NYSCEF Doc. Nos. 97-98

Facts and Procedural History

Petitioner commenced the instant licensee holdover proceeding against Respondents Maria Medina, “John Doe” and “Jane Doe”, in this rent stabilized (RS) apartment, subject to the Low-Income Housing Tax Credit (LIHTC) overseen by the Division of Housing and Community Renewal (HCR). Respondent Medina (Respondent) acquired Brooklyn Legal Services, Inc. as counsel, who filed the instant motion seeking summary judgment on the issue of succession and Petitioner cross-moved for summary judgment alleging that granting Respondent succession would violate Low Income Housing Tax Credit (LIHTC) program rules, and place the subject premises out of compliance, and risks the loss of building-wide tax credit status, thus succession cannot be granted as it is prohibited by federal law and/or HCR. The matter was fully briefed and after oral argument the court reserved decision.

Summary Judgment Standard

A motion for summary judgment may be granted only when there is no doubt as to the absence of any triable issue of material fact (*Kolivas v Kirchoff*, 14 AD3d 493, 787 NYS2d 392 [2nd Dept 2005]). "Issue finding, rather than issue determination is the court's function. If there is any doubt about the existence of a triable issue of fact or if a material issue of fact is arguable,

summary judgment should be denied" (*Celardo v Bell*, 222 AD2d 547, 548, 635 NYS2d 85, 86[2nd Dept 1995]). A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 508 NYS2d 923 [1986]; *Napolitano v Suffolk County Dep't of Pub. Works*, 65 AD3d 676, 884 NYS2d 484 [2nd Dept 2009]). If a *prima facie* showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d 320, 324, 508 NYS2d 923, 926).

"[O]ne opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions expressions of hope or unsubstantiated allegations or assertions are insufficient" (*Zuckerman v City of New York*, 49 NY2d 557, 562, 427 NYS2d 595, 598 [1980]; *See Gardner v. Schuster*, 91 AD2d 625, 456 NYS 2d 807 [2d Dept 1982]).

Discussion

In the instant matter the parties' arguments for summary judgment are grounded upon the doctrine of succession under the Rent stabilization Code (RSC) and the rules governing the LIHTC program, as it is undisputed that both regulations apply to the subject premises. The succession provision of the RSC provides, in pertinent part, as follows:

"Unless otherwise prohibited by occupancy restrictions based upon income limitations pursuant to federal, state or local law, regulations or other requirements of governmental agencies, if an offer is made to the tenant pursuant to the provisions of subdivision (a) of this section and such tenant has permanently vacated the housing accommodation, any member of such tenant's family, as defined in section 2520.6(o) of this Title, who has resided with the tenant in the housing accommodation as a primary residence for a period of no less than two years ... immediately prior to the permanent vacating of the housing accommodation by the tenant, or from the inception of the tenancy or commencement of the relationship, if for less than such periods, shall be entitled to be named as a tenant on the renewal lease" (RSC [9 NYCRR] § 2523.5[b][1]).

Not dissimilar from Rent stabilization law and code, the LIHTC program was created as a remedy to the growing concerns of affordable housing.

"[I]n 1986, Congress enacted Section 42 of the Internal Revenue Code (Act) to provide the private market with an incentive to invest in affordable rental housing (26 USC § 42 et seq.). Developers of qualified projects are eligible to receive federal housing tax credits through a state allocation agency or sub-allocation agency, such as HPD [or HCR] (26 USC § 42[h]). The administering agency will disburse tax credits to a qualified developer consistent with the agency's federally approved Qualified Allocation Plan (QAP) (26 USC § 42[m] [1][A]). Among other things, the QAP must give priority to projects that serve the lowest income tenants and are structured to remain affordable for the longest period of time (26 USC § 42[m][1][B][ii]).... Developers must, however, certify their compliance with program requirements in order to remain eligible to receive tax credits. (26 USC § 42[l]; 26 CFR § 1.42-5[c]). Non-compliant developers also face recapture of their tax credits (26 USC § 42[j]). *NSA 2015 Owner LLC v. Brown*, 65 Misc. 3d 1204(A), 118 N.Y.S.3d 377 (Civ. Ct. New York Co. 2019)

However, the LIHTC does not address succession, and, upon review of the regulatory agreement, to which this unit is subject to, it is also silent as to succession, leaving the issue plainly in the domain of the RSC (NY St Cts Elec Filing [NYSCEF] Doc. No. 72).

Respondent, in her motion for summary judgment, seeks dismissal on the basis that she has established her minor son's right to succeed in this rent stabilized apartment and argues that the LIHTC program does not preempt provisions of the RSC.

Petitioner does not dispute that Respondent has established the requirements for succession for her son under RSC § 2523.5(b)(1) as the tenant of record (TOR), who vacated the subject premises, and Respondent have a minor child in common, who lived with the TOR since his birth. Further, Petitioner does not dispute that the succession doctrine of the RSC is compatible with the purpose and goals of the LIHTC program. Instead, Petitioner opposes Respondent's motion and cross-moves for summary judgment arguing that succession cannot be granted as doing so would violate LIHTC program rules. Petitioner reasons that since no one in Respondent's household was an original member of the household either at the inception of the lease or on any annual recertification, Respondent would have to undergo a new certification as a low-income tenant under LIHTC rules; however, Respondent's household income and size disqualify her for the LIHTC program based upon the designation of the subject premises as a "Deep Rent Skewed Unit" and its status as a studio apartment. Accordingly, Petitioner alleges that granting succession risks Petitioner's ability to comply with program rules and risks the tax credit status of the building.

In opposition and rebuttal, Respondent notes that Petitioner in effect is seeking to add a requirement to succession as the Respondent's son is not required by to be a member of the household at the inception of the tenancy or be on annual income recertifications. Respondent cites to several cases holding that previously not being listed on annual recertifications does not bar succession and that LIHTC regulations don't prohibit Respondent's right to succeed. *See (Dumon Green LL v. Paul*, 77 Misc. 3d 1219(A), 179 NYS3d 844 (holding that the subject premises, a rent stabilized apartment, carries the right to succeed, nothing contained in the LIHTC program prohibits this right and the absence of Respondent's name from annual income recertifications does not bar succession); *Crotona Park Residences LLC v. Elicier*, 82 Misc 3d 1253(A), 210 NYS3d 720, (Civ. Ct. Bronx Co. 2024) (holding that "respondent's absence from the prior tenant's income affidavit does not bar the respondent's undisputed right to succeed to the subject premises under RSC § 2523.5"); *see also, Matter of Murphy v. N.Y. State Div. of Hous. & Cmty. Renewal*, 21 NY3d 649, 652 (2013), *River Park Residences, L.P. v. Carter*, 62 Misc 3d 1223(A)(Civ. Ct. Bronx Co. 2019). Thus, the case law makes clear that Respondent's son's absence from annual income recertifications cannot be a bar to his succession.

Further, Petitioner cites to no case law in support of its argument that certification as a new income-qualified household is necessary. Instead, Petitioner relies on emails that either include snippets from Internal Revenue Service (IRS) guidance for low-income housing or HPD's manual (NYSCEF Doc. Nos. 88), and email correspondence with HPD and HCR representatives (NYSCEF Doc. Nos. 90, 91, 92). However, as Respondent points out, Petitioner's evidence is not conclusive.

Petitioner fails to convince this court that alternative measures, which would allow Respondent's son to succeed while allowing Petitioner to remain in compliance with LIHTC rules, are unavailable, particularly in light of the language in the regulatory agreement. Under section 4.2 (b) "Tenants and leases, low income occupancy requirements; supportive housing requirements" which provides flexibility in a unit maintaining its "Low Income Unit" status notwithstanding increases in the household income over 170% of the applicable income limit, which supports Respondent's argument that Petitioner can make use of the exceptions available, which include the next available unit rule. Additionally, Petitioner cites to the regulatory agreement section 5.2

“Low-income unit requirements”, to show that Respondent’s household is too large for the unit jeopardizing Petitioner’s ability to comply with LIHTC rules. (NYSCEF Doc. No. 72, pg. 21). However, Petitioner need only ensure that low-income units are occupied by households of an appropriate number of individuals on initial rent or re-rental of such units, though initial and re-rental are not defined in the regulatory agreement, Petitioner references 9 NYCRR 1727-2.8(a) in finding that this requirement addresses new tenancies or transfer applications. *See*, 9 NYCRR 1727-2.8(a). As successor tenant steps into the shoes of the TOR, successors do not fit within either classification. *See, CB CSH 2015 LLC v. Henry*, Civ. Ct. Kings County, February 13, 2019, Slade, J., Index No. 074381/17 (holding that it is “most consistent with the agreements that govern LIHTC, the RSL and the goals” of each that a successor be viewed as a “current tenant via succession” not a subsequent tenant). Respondent’s son as a successor thus should not be held to this stringent rule for new tenancies and should instead be given the flexibility the TOR of record would have been provided under LIHTC program rules, as Respondent’s son is a current tenant via succession. To find otherwise is to find that a successor is not allowed to step into the shoes of the former tenant of record, which goes against the very spirit of the law.

“States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular” *Loretto v. Teleprompter Manhattan Catv Corp.*, 458 U.S. 419, 440, 102 S. Ct. 3164, 3178 (1982). The legislative intent of the succession provision of the RSC is to preserve housing for long-term occupants when the TOR dies or vacates and to preserve the rent stabilization status of apartments so as not to reduce the housing stock in New York City. This purpose continues to be an important protection for families who would otherwise be displaced, suffering the harsh consequence of eviction, simply because of the vacatur or death of the TOR, and sentenced to indefinite homelessness as the city continues to suffer from an affordable housing crisis where rents are outpacing renters’ income.¹ The court in *Dumon Green LLC v Paul*, examined the legislative history and policy of the right of family members to succeed and how courts have found that this doctrine should be liberally construed “to carry out the reformed [sic] intended and to spread its beneficial effects as widely as possible.” *Dumon Green LLC v. Paul*, 77 Misc. 3d 1219(A), 179 NYS3d 844 (Civ. Ct. New York Co. 2019) citing *Lesser v. Park, 635 Realty Corp.*, 140 AD2d 169, 173, 527 NYS2d 787, 790(1988).

As it is undisputed that Respondent’s son has met the requirement to succeed, he must be entitled to all the rights, privileges and protections of the TOR; accordingly, he should be afforded the same protection that the TOR would have enjoyed under LIHTC rules, which contemplates the growth of his family and the increased income of his household. Holding otherwise would fly in the face of what it means to be a successor tenant, leading to the erosion of the right to succeed in a rent stabilized apartment. This end would be contrary to the goals of the RSC and LIHTC; accordingly, the court is unpersuaded by Petitioner’s arguments that Respondent’s son should not be allowed to succeed based on LIHTC standards, as the program rules allow for exceptions, and finds Petitioner failed to establish its claim for summary judgment and/or rebut Respondent’s claim for the same relief.

Conclusion

Accordingly, it is,

ORDERED, Respondent’s motion is granted, as Respondent’s son is entitled to be named in a successor lease, and this proceeding is dismissed. It is also,

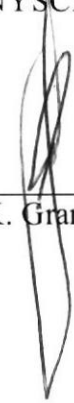
¹ (NYC Housing, <https://www.nyc.gov/site/housing/about/problem.page> [last accessed on Oct. 14, 2025])

ORDERED, Petitioner's motion is denied in its entirety. It is further,

ORDERED, Respondent is to file notice of entry of this Decision and Order on Petitioner within seven days of it being uploaded to NYSCEF.

This is the court's Decision and Order which shall be uploaded to NYSCEF.

Dated: Brooklyn, New York
October 14, 2025



Sulay K. Grant, JHC