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Matter of Monmar Plaza, L.P. v. New York State Div. of Hous. & Community Renewal

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**Matter of Monmar Plaza, L.P. v New York State Div.
of Hous. & Community Renewal**

2021 NY Slip Op 31988(U)

May 28, 2021

Supreme Court, Kings County

Docket Number: 441/2020

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 28th day of May 2021.

PRESENT:

HON. WAVNY TOUSSAINT,
Justice.

----- X

In the Matter of the Application of
MONMAR PLAZA, L.P.,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules,

- against -

NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL, AND
BEVERLY LAWRENCE-SMITH,

Respondents.

----- X

The following e-filed papers read herein:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed

Opposing Affidavits (Affirmations)

Reply Affidavits (Affirmations)

Doc. Nos.

1-2

3

4

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Upon the foregoing papers in this petition pursuant to Article 78 of the Civil Practice Law and Rules, petitioner Monmar Plaza L.P., (Monmar or petitioner) moves for an order, pursuant to Civil Practice Law and Rules Section 7803(3), directing respondent, the New York State Division of Housing and Community Renewal (DHCR) to issue an order

reversing the Deputy Commissioner's Order dated December 4, 2019 or, in the alternative, remanding this matter for further agency proceedings.

Background

The subject petition, filed with this court on January 31, 2020, asserts that Monmar is the owner of the building located at 814 Marcy Avenue, Brooklyn, NY, and has been the owner since purchasing the subject building from the previous owner on October 21, 2014. As pertinent to the instant proceedings, the building has, at all relevant times, been rent-stabilized pursuant to the Rent Stabilization Code (RSC). However, on or about April 7, 2004, the prior owner submitted an application to DHCR to determine whether the subject building is exempt from the Emergency Tenant Protection Act or the Rent Stabilization Law. By order dated February 28, 2007, DHCR closed the proceeding without prejudice because, despite the fact that extensive renovations had been undertaken, a new Certificate of Occupancy had not been issued.

In July of 2015, respondent Beverly Lawrence-Smith (Lawrence-Smith or Tenant), who resides in unit 3L or 3G (both are stated on the DHCR's Rent Administrator's order dated March 28, 2019), commenced a DHCR proceeding pursuant to Section 2202.22 of the NYC Rent and Eviction Regulations. Lawrence-Smith alleged that in 2004, the prior owner "changed the status of the apartment from rent controlled to exempt due to a substantial rehabilitation of the subject building." Lawrence-Smith also claimed that she had resided in the subject unit continuously since 1968 (first, with her mother). She argued that her mother was entitled to rent-control protection as a resident of the unit, and, after

her mother vacated the unit, she succeeded to whatever rent-control rights her mother had as a tenant.

In response, Monmar first asserted it has since, completed a substantial rehabilitation of the subject building and, unlike the prior owner, has caused an updated certificate of occupancy to be issued, the building should be declared exempt from rent-stabilization.

In an order dated March 28, 2019, the DHCR's Rent Administrator determined that, 1) with respect to rent stabilization, "this Agency never issued an order stating that the subject building is exempt from rent regulations due to a substantial rehabilitation[.]" and 2) with respect to whether the Tenant is entitled to rent-control protection, "since the record indicates that the tenant has lived in the subject apartment continuously from 1968, the Rent Administrator finds that the tenant is a rent controlled tenant of the subject apartment and is entitled to the rights and protections afforded under rent control."

Consequently, petitioner herein sought administrative review of the Rent Administrator's order, which resulted in the DHCR's order dated December 4, 2019, affirming the Rent Administrator's order. That order states:

... "Accordingly, the Commissioner finds no error in the Administrator's finding that the current owner must refile a complete Form RS-3 Application, along with the new Certificate of Occupancy and an updated tenant list as was required of the prior owner in Docket No. SD210004UC, in order for all current parties to be properly served and for the Division to determine whether the building is exempt from rent regulation. The Commissioner notes the owner currently has an application pending pursuant to Docket No. HT210003UC wherein a Rent Administrator will determine if the subject premises is exempt from regulation.

The owner's claims regarding the rent controlled status of the subject tenant are also without merit. The Commissioner notes that succession claims in

rent controlled matters are determined pursuant to Section 2204.6 (d) (1) of the Rent & Eviction Regulations, which states that: . . . the city rent agency shall not issue an order granting a certificate of eviction, and any member of the tenant's family, as defined in paragraph (3) of this subdivision, shall not be evicted under this section where the tenant has permanently vacated the housing accommodation and such member 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

‘During the proceeding below, the tenant of Apartment 3L submitted multiple documents in support of her claim that the subject premises has been her primary residence for several years, including marriage licenses, a death certificate, voter registration data, a birth certificate for the tenant’s daughter, and mail addressed to the tenant. Said documents date back to as early as 1981, and each lists the subject apartment as the tenant’s place of residence. The owner does not dispute that the current tenant is the daughter of the former rent controlled tenant of Apartment 3L or that the current tenant’s mother vacated the subject premises in or around 2002. The owner-petitioner’s claim that the tenant of Apartment 3L failed to provide adequate documentation indicating that she met the succession claim requirement of ‘[residing] with the tenant in the housing accommodation as a primary residence for a period of no less than two years’ is therefore unsupported by the record. The owner's statement that the tenant should be time barred from claiming rent control status because she signed a rent stabilized lease in 2003 is also without merit.’”

Consequently, petitioner commenced the instant Article 78 petition, challenging the December 4, 2019 order, against both DHCR and the Tenant, who have both interposed answers.

Petitioner’s Arguments

In support of the instant petition, Monmar claims that DHCR acted in an arbitrary and capricious manner, and the underlying order issued was contrary to considerations of equity and fair dealing. More specifically, petitioner asserts that DHCR erred when it determined that it (or its predecessor-in-interest) did not complete a substantial

rehabilitation of the subject building and is therefore not exempt from rent regulation. Monmar claims that it submitted, in the underlying hearing, sufficient evidence to establish that it completed a substantial rehabilitation of the subject building. Petitioner also notes that the prior owner applied for an agency order determining that the subject building is exempt from the Emergency Tenant Protection Act or the Rent Stabilization Law; however, that proceeding was closed without prejudice because the prior owner could not show that a new certificate of occupancy was issued for the subject building. Monmar points out that there is now a valid certificate of occupancy issued for the building, and, as such, the substantial renovation (entitling petitioner to a determination that the building is exempt from rent stabilization) is complete. For this reason, petitioner concludes that DHCR's decision to deny rent stabilization exemption lacked a rational basis and was thus arbitrary and capricious.

Next, petitioner claims that it was erroneous for DHCR to require it (or its predecessor-in-interest) to have applied for approval of a substantial renovation project. Monmar asserts that the Rent Stabilization Law defines what constitutes a substantial renovation of a rent-stabilized building and adds that the subject statute also contains a "presumption of substantial renovation" if certain conditions exist. Monmar argues that DHCR has no authority to ignore the presumption or the remaining text of the statute. Petitioner further claims that DHCR has no authority to require anything (such as an application for approval) that is not mandated by the statute. Monmar maintains that the Rent Stabilization Law provisions concerning substantial renovation cannot be modified by waiver, estoppel or private agreement. Therefore, to the extent that DHCR based its

determination on the record's absence of a prior application for approval of a substantial rehabilitation, the determination lacked a rational basis and is thus arbitrary and capricious.

Alternatively, Monmar claims "it is not clear why the DHCR did not hold the underlying proceeding in abeyance, pending a determination by the DHCR on the same issue . . . whether or not the subject premises is exempt from regulation." Monmar contends that, if DHCR later rules that the subject building is not rent-stabilized, but the Tenant was already entitled to rent-control protection, "there would be two conflicting Orders on the same exact regulatory issue." Therefore, it was arbitrary and capricious for DHCR to fail to hold the proceedings commenced by the Tenant in abeyance until the rent-stabilization issue was resolved.

In support, petitioner proffers that Lawrence-Smith signed a vacancy lease as a rent stabilized tenant in 2003. Monmar reasons that, therefore, the Tenant did not succeed to her mother's rent-control rights, rather, she became a new subsequent tenant without such rights. Moreover, Monmar claims that Lawrence-Smith did not submit sufficient evidence to support a finding that she resided continuously in the subject unit during the requisite time period. In fact, petitioner continues, the Tenant "did not provide any photo identifications, driver licenses, motor vehicle registrations, U.S. Federal Tax returns, New York tax returns, W-2 Statements, K-1 forms, pay stubs, employment contracts, utility bills, telephone bills, cable bills, any mortgages, leases, professional licenses, credit card bills, bank statements, insurance policies, jury service notices, memberships in any associations, membership clubs, tax bills, school records and/or employment records . . . [s]he only provided very limited documentation over a very long period of time and it is

not sufficient.” Petitioner expresses incredulity that Lawrence-Smith would not submit copies of these documents if she truly has lived continuously in the subject unit since 1968. Also, adds Monmar, the Tenant has submitted “no documentation at all . . . that states that the tenant of record Evelyn Lawrence [the Tenant’s mother] vacated the subject apartment in 2002, or any other date . . . [t]his has not been proven . . . [i]n fact, the Challenged order incorrectly states that the owner does not dispute that the mother vacated in or around 2002 . . . [t]he Owner did dispute this and continues to dispute this now.” Lastly, and in the alternative, petitioner argues that “pursuant to the doctrine of laches, Ms. Lawrence-Smith should be time barred from making the claim to succession rights after living as a Rent Stabilized tenant since 2003.” For these reasons, Monmar concludes that the petition should be granted and that either the underlying DHCR order should be reversed, or the matter should be remanded.

DHCR’s Arguments

In opposition, DHCR first asserts that it was entirely rational for DHCR to determine that the Tenant was entitled to rent-control protection. DHCR asserts that the Rent Control Law (RCL) and Rent and Eviction Regulations (RER) provide the framework that governs the rights of succession relative to rent-control protection. DHCR argues that an occupant (not named as the Tenant of Record) of a unit that is otherwise subject to rent-control is entitled to the rent-control protection given to the prior tenant in certain circumstances. Specifically, in order to be entitled to rent-control protection succession, the successive tenant must be a family member of the tenant of record and needs to have resided with the tenant of record in the housing accommodation as its primary residence

for a period of no less than two years immediately prior to the tenant of record permanently vacating the subject unit.

DHCR claims that it correctly found that Lawrence-Smith had submitted sufficient documentation to establish her right to succession. DCHR notes that Tenant provided: 1) her Birth Certificate from 1960; 2) her mother Evelyn Lawrence's Rent Control Registration Card from 1972; 3) the Apartment Registration from 1984 to 2013; 4) her Board of Elections voting documents; 5) her 1981 marriage certificate; 6) her daughter's 1997 birth certificate; 7) her first husband's 1999 death certificate; 8) her 2001 marriage certificate; 9) tickets to the circus from 2001; and 10) a Western Union money transfer order from 2001. DHCR claims that these items establish that the Tenant has qualified for successive rent-control protection under the RCL and RER.

DHCR next turns to petitioner's arguments and points out that although petitioner does not challenge the fact that Evelyn Smith was the original Tenant of Record or that Lawrence-Smith was her daughter, the record nevertheless shows that the Tenant provided her birth certificate, her mother's 1972 rent control registration card and the apartment registration beginning in 1984 to demonstrate those facts. Moreover, DHCR points out that the apartment registration shows that the Tenant's mother permanently vacated the apartment in or around 2002, given that the prior owner of the building stopped registering Evelyn Lawrence in applicable documents as the Tenant of Record as of April 2003 and began registering Lawrence-Smith. DHCR argues that this registry establishes that the prior owner of the building knew and accepted the fact that Evelyn Lawrence permanently vacated from the property and that Lawrence-Smith took it over. Additionally, DCHR

notes that the record shows that the Tenant provided several documents to demonstrate that she had resided with her mother in the apartment, as her primary residence, for a period of at least two years immediately prior her mother permanently vacating the subject unit. This evidence includes her Board of Elections documents, her 1981 marriage certificate, her daughter's 1997 birth certificate, her first husband's death certificate and her 2001 marriage certificate. DHCR maintains that these are all government-issued documents that contain the subject unit address, and thus support Tenant's claim that she has lived in the apartment as her primary residence for more than the two years required to be entitled to succeed her mother and receive rent-regulation protection.

DHCR acknowledges that petitioner claims the Tenant provided no documentation to show that she resided in the apartment during the period of 2000 to 20002 after her mother vacated the unit, however, contends that this is incorrect. DHCR notes that the Tenant provided circus tickets as well as a Western Union money transfer document from 2001, both of which listed her address as at 814 Marcy Avenue. Additionally, DHCR continues, the Tenant's Board of Elections voting documents list the same address and have entries for the same time frame. Specifically, adds DHCR, the voting records show that she has been registered to vote at that address since 1989 and that she voted in 2001. According to DHCR, petitioner provided no evidence to rebut the Tenant's claim that she lived in the apartment as her primary residence during the requisite time period. For these reasons, DHCR concludes that the record more than sufficiently supports the agency's determination that the Tenant is allowed to succeed her mother's rent-regulation protection.

Next, DHCR claims that its interpretation of the evidence is entitled to deference from the courts of this state. DHCR argues that an agency such as itself has great discretion in deciding which evidence to accept and how much weight should be accorded particular documents or testimonial statements. As a result, its determination is subject only to the legal requirement that the administrative finding be rationally based. DHCR maintains that it was perfectly rational for DHCR to review all of the pieces of evidence Lawrence-Smith provided and determine that she met her burden to prove the right of succession to her mother's rent-regulation protection. DHCR notes petitioner's argument that the Tenant is not entitled to succession of rent-regulation protection because she did not submit other types of documents (tax returns and driver's licenses) to prove residency at the subject address is meritless because the applicable appellate authority establishes that there are no necessary items of evidence that a tenant must provide to demonstrate entitlement to succession of another's rent-regulation protections; all that is necessary is that there is a rational basis to conclude that the subject tenant resided at the subject address at relevant times, and, here, such a rational basis exists.

DHCR argues that since a rational basis exists for its determination, petitioner is thus unable to show that DHCR acted arbitrarily and capriciously in granting the Tenant's succession claim. DHCR further argues that Monmar's specific arguments lack merit. For example, petitioner alleges that Lawrence-Smith was not entitled to succeed to her mother's rent-regulation protections because she purportedly waived her status by signing a vacancy lease and becoming a new tenant. DHCR contends that the applicable appellate authority states that since the rent regulatory scheme is governed by statute, rent-regulation

protection cannot be created or extinguished by waiver or equitable estoppel. DHCR further points out that courts have repeatedly held that it is the fact of the occupancy, and not whether documents were filed or executed, that establishes the rent-controlled status of an apartment; accordingly, any lease agreements executed by the Tenant are not relevant to this proceeding. In sum, DHCR argues that the fact that petitioner gave the Tenant a vacancy lease to sign and registered the apartment as vacant, does not establish that Lawrence-Smith waived her rent-controlled status. Since Tenant's claim cannot be waived, she is not time-barred from claiming succession rights.

DHCR reiterates that Lawrence-Smith supported her contentions with the aforementioned items of evidence. Moreover, Monmar claims that in the underlying hearing, petitioner failed to rebut the Tenant's prima facie showing of entitlement to continuation of rent control as Monmar did not offer a single piece of evidence to rebut the Tenant's claim and instead merely stated that she provided insufficient documentation to prove her residency at the subject unit at relevant times. DHCR argues that courts have held that to overturn an agency determination extending rent control benefits, it is insufficient for a landlord to merely assert that a tenant has not provided enough proof of residence, the landlord must affirmatively show through its own evidence that the tenant did not reside in the unit. Here, DHCR adds, petitioner has failed to introduce any such evidence; accordingly, its determination of succession of rent-control benefits was rationally based and unrebutted by a challenger.

Lastly, the DHCR points out that petitioner, as the present owner of the subject unit, has no greater rights as a landlord than its predecessor in interest had. DHCR acknowledges

that although Monmar did not own the property in 2003, the prior owner registered the Tenant as the resident of the subject unit after it became vacant. Accordingly, the petitioner steps into the prior owner's shoes and is thus charged, by operation of law, with accepting Tenant as the registered occupant of the subject unit. Lastly, DHCR points out that since petitioner did not proffer any evidence to rebut the Tenant's evidence, petitioner cannot successfully dispute the fact that the Tenant's mother vacated at the unit in or around 2002. In sum, DHCR maintains that its determination to allow the Tenant to succeed her mother's rent-regulation protection is rationally based, and since petitioner added no evidence of its own to the record, this court must sustain the subject agency determination.

Tenant's Arguments

Tenant first argues that the court should affirm DHCR's order and opinion denying the petition for administrative review, finding that she succeeded to her mother's rent-controlled apartment. Lawrence-Smith claims, contrary to the petition's allegations, that the record contains no indication that the underlying administrative decision was made in violation of lawful procedure, affected by an error of law, or arbitrary or capricious or an abuse of discretion. Indeed, DHCR properly determined that she was entitled to succession rights as she provided sufficient documents to substantiate her claim. Lawrence-Smith alleges that petitioner inaccurately states that she failed to provide DHCR with any documents that established that she was living with her mother between 2000 and 2002. To the contrary, she argues that she submitted several documents indicating the residence including a copy of her Certificate of Marriage dated December 12, 2001 and a copy of her NYS Voter Registration application dated December 27, 2001. She concludes that in the

underlying proceeding, she submitted sufficient documentary evidence along with written affirmations which demonstrated that her mother lived with her in the subject apartment during the statutory time period.

Next, the Tenant claims that the question of whether petitioner completed a substantial rehabilitation of the subject building has no impact in the instant proceeding. Lawrence-Smith alleges that both DHCR Operation Bulletin 95-2 and applicable legal authority state that tenants who occupy or constructively occupy their apartments as their building is undergoing a substantial rehabilitation preserve their rent-regulated tenancy. The Tenant concludes that the rent-regulated apartment is not automatically transformed into a market-rate apartment, even assuming that the alleged substantial rehabilitation took place. Accordingly, the proceedings related to whether the subject building is rent-stabilized are irrelevant to the instant matter.

Lastly, the Tenant argues that this court should not consider any legal arguments or facts that were either not alleged by petitioner or not reviewed by DHCR in the underlying proceedings. Lawrence-Smith asserts that it would be erroneous for this court to consider additional facts beyond those submitted in the underlying proceeding that determined the regulatory status of the subject apartment. She further claims that, throughout the underlying proceeding, petitioner had ample opportunities to challenge her tenancy claims; instead, petitioner chose to focus on the prior owner's substantial rehabilitation application and the issuance of a new certificate of occupancy. Finally, Lawrence-Smith contends that any argument that she is or was time-barred from asserting succession to her mother's rent-

control rights is directly rejected by applicable legal authority. For these reasons, she concludes that the petition should be denied.

Discussion

“In a CPLR article 78 proceeding to review a determination of an administrative agency, the standard of judicial review is whether the determination was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion” (*Matter of Rada Corp. v Gluckman*, 171 AD3d 1189, 1190 [2d Dept 2019], citing CPLR 7803 [3]). “Arbitrary action is without sound basis in reason and is generally taken without regard to the facts” (*Matter of Pell v Bd. of Ed. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester Cty.*, 34 NY2d 222, 231[1974]). “If the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency” (*Pelaez v. State of New York Exec. Dep't Crime Victims Bd.*, 186 AD3d 831, 833 [2d Dept 2020]). Stated simply, “[t]he court may not substitute its judgment for that of the DHCR” (*Matter of Bedeau Realty Corp. v State of New York, Div. of Hous. & Community Renewal*, 177 AD3d 872, 873 [2d Dept 2019]). The DHCR's interpretation of the statutes and regulations it administers, if reasonable, must be upheld” (*Id.*, quoting *Matter of Riverside Tenants Assn. v New York State Div. of Hous. & Community Renewal*, 133 AD3d 764, 766 [2d Dept 2015]; see also *Matter of Terrace Ct., LLC v New York State Div. of Hous. & Community Renewal*, 18 NY3d 446, 453-454 [2012]). Deference to DHCR's determinations may be particularly appropriate where they relate to “fact-intensive issue[s] falling within the area of [the

agency's] expertise" (*Matter of Brusco W. 78th St. Assocs. v DHCR*, 281 AD2d 165, 165 [1st Dept 2001]). The agency may generally determine the type of documentation to be necessary or appropriate on fact-based inquiries (*see Matter of 2084-2086 Bronx Park East, LLP v DHCR*, 303 AD2d 315, 316 [1st Dept 2003] *Greystone Mgt. Corp. v Conciliation & Appeals Bd.*, 94 AD2d 614, 616 [1st Dept 1983], *affd* 62 NY2d 763 [1984]).

Here, the petition is denied as the challenged DHCR determination is supported by a rational basis. Contrary to Monmar's argument that no authority exists for the DHCR to insist upon a specific completed application or form before determining whether a building is rent-stabilized, sections 2527.1 and 2527.11 of the RSC both explicitly empower DHCR both to promulgate forms for agency proceedings and to require participants to use the issued forms (*see* NY RENT STAB §§ 2527.1 and 2527.11). Thus, there is no merit to the suggestion that DHCR cannot require a building owner seeking an order determining that a building is exempt from rent stabilization on the ground that a substantial rehabilitation was undertaken to complete a form application before the proceeding commences.

Also, without merit is Monmar's suggestion that the Tenant provided insufficient proof of unit residence during the required time period (or, that the DHCR should have insisted on further proof). Although petitioner identifies a litany of documents that could have been used to prove residence at an address, petitioner's statement that what the Tenant provided "is not sufficient" is conclusory and unsupported by legal authority. To the contrary, "no one factor is completely determinative with regard to whether a relative may succeed to the rights of a... tenant when the tenant permanently vacates. What is dispositive

is whether the respondent can make a showing, under the totality of the circumstances, that [she] lived with the deceased...tenant as a family unit, and that it was for more than a short period of time” (*Greene Ave. Associates v Reape*, 182 Misc2d 379 [Civil Ct New York County 1999], citing *NSA North Flatbush Assoc. v Mackie*, 166 Misc 2d 446, 453 [Civil Ct Kings County 1995]; see also *WSC Riverside Dr. Owners LLC v Williams*, 125 AD3d 458, 459 [1st Dept 2015]). In fact, given this authority, it would have been error for DHCR to insist on the particular items identified by petitioner (see e.g. *Kogan v Popolizio*, 141 AD2d 339, 344 [1st Dept 1988] [finding that “an agency has great discretion in deciding which evidence to accept and how much weight should be accorded particular documents or testimonial statements, and its determination in that respect is subject only to the legal requirement that the administrative finding be rationally based”]). “[W]hen determining succession rights, the focus is on preventing displacement of family members when they have been residing with tenants at housing accommodations for long periods of time” (*Matter of Underhill-Washington Equities, LLC v Div. of Hous. & Cmty. Renewal*, 157 AD3d 705, 707 [2d Dept 2018]). As a result, the Court finds the challenged DHCR determination with respect to the Tenant’s rent-control succession rights is supported by the record and will thus not be disturbed.

Additionally, Monmar’s suggestion that the Tenant somehow waived rent-control succession rights – or, that the Tenant is time-barred from asserting them – is directly contradicted by legal authority. “[C]overage under a rent regulatory scheme is governed by statute and cannot be created by waiver or equitable estoppel” (*Gregory v Colonial DPC Corp. IH*, 234 AD2d 419, [2d Dept 1996]). Also, “the Rent Control Laws indicate that

whenever a prime-tenant permanently vacates, a successor family member who has met the two-year co-residency requirement may avail him-herself of succession rights at any point thereafter” (*Underhill Washington Enterprises v N.Y. State Div. of Hous. & Community Renewal*, 47 Misc 3d 1215[A], 2015 NY Slip Op 50632[U] [Sup Ct, Kings County 2015] [affirming succession claim raised 10 years after tenant permanently vacated], *aff’d* 157 AD3d 705 [2d Dept 2018]). Moreover, an apartment’s rent-stabilized status is not determined merely by whether a tenant signed a lease indicating the same (*see e.g. Heller v Middagh St. Assocs.*, 4 AD3d 332 [2d Dept 2004]). To the contrary, “courts have repeatedly held that it is the fact of the occupancy and not forms submitted to DHCR that establishes the rent-controlled status of an apartment” (*Widerker v Castro*, 188 Misc 2d 571, 573 [Civ Ct Kings Co 2001], citing *Forbes v Lomazow*, 22 App Div 800 [2d Dept 1964]). Moreover, to the extent that the relevant occupancy occurred when the building was owned by Monmar’s predecessor in interest, petitioner succeeds to the same responsibilities with respect to rent regulation (*Helfand v Div. of Hous. & Cmty. Renewal*, 182 Misc 2d 1, 5-6 [Sup Ct, NY County, May 3, 1999] [“It is by now a well-worn legal adage that under the rent stabilization scheme the new owner steps into the shoes of the prior owner and that a succeeding landlord is bound by the misfeasance of his predecessor in interest”). Therefore, the fact that Lawrence-Smith has occupied the subject unit for the requisite time period, proven to DHCR with submitted documents and unrebutted by petitioner, is what establishes the Tenant’s non-waivable succession of her mother’s rent-control protections relative to the subject unit.

Moreover, the cases cited by Monmar do not demonstrate that the Tenant failed to prove succession. Petitioner cites *Matter of Jimmy Cruz* (DHCR Dkt. No.: BQ 610041 RT) and *Matter of Nocco* (DHCR Dkt. No.: WL 220018 RT) to support its argument that the Tenant failed to prove succession to her mother's rent control rights. However, in both cases the agency was provided documentation that indicated that the tenant seeking succession rights resided at a different address than the rent-controlled unit. In contrast, petitioner herein has failed to provide evidence to refute Lawrence-Smith's claim that she was entitled to succession of her mother's rent-control protection because she resided in the subject unit for the majority of her life.

Lastly, the court rejects petitioner's argument that the issue of whether the Tenant succeeded to her mother's rent-control protections should be held in abeyance until DHCR determines whether the building is exempt from rent-stabilization because a substantial renovation was completed. This argument seems to confuse the issue of whether a building is rent-stabilized with the question of whether a tenant has the right to a rent-controlled unit. Monmar cites no authority even suggesting that the Lawrence-Smith cannot have rent-control protection in a building that is otherwise exempt from rent stabilization. Indeed, there appears to be authority suggesting precisely the opposite conclusion (*see e.g. Ecco Land Corp. v DHCR*, 11 AD3d 683 [2d Dept 2004] [tenants who temporarily vacate their apartments after a fire constructively occupied their apartments during the ensuing rehabilitation and thus retained their rent-stabilized status]; *Copeland v NY State Div. of Hous. & Community Renewal*, 164 Misc 2d 42 [Sup Ct NY County 1994] [tenant who temporarily vacated apartment retained rent-stabilized status when building converted

seven apartments to three apartments]). Accordingly, the contention that this court should hold the determination of the Lawrence-Smith's rent-control rights in abeyance until DHCR decides whether the subject building remains rent-stabilized lacks merit.

Conclusion

Accordingly, it is

ORDERED, that petitioner's motion (motion sequence 001) to direct the respondent, the New York State Division of Housing and Community Renewal (DHCR) to issue an order reversing the Deputy Commissioner's Order dated December 4, 2019 or, in the alternative, remanding this matter for further agency proceedings, is hereby denied in its entirety; and it is further

ORDERED, that the petition is hereby dismissed.

The foregoing constitutes the decision and order of the court.

ENTER,



J.S.C.

HON. WAVNY TOUSSAINT

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