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2022-03-16

Linden Plaza Preservation LP v. Taylor

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"Linden Plaza Preservation LP v. Taylor" (2022). *All Decisions*. 458.
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Department of
Housing Preservation
& Development
nyc.gov/hpd

Office of Asset & Property
Management
Division of Housing
Supervision
100 Gold Street
New York, N.Y. 10038

ADOLFO CARRION JR.
Commissioner

A. A. HENDRICKSON
Deputy Commissioner

JULIE WALPERT
Assistant Commissioner

March 16, 2022

Lauren Shevit, Esq.
Gutman, Mintz, Baker
& Sonnenfeldt, LLP
813 Jericho Turnpike
New Hyde Park, N.Y. 11040

Re: Linden Plaza Preservation LP v.
Tiara Taylor, et. al.
760 Eldert Lane
Apt. #1G
Brooklyn, N.Y. 11208

Dear Ms. Shevit:

Enclosed please find a copy of the decision rendered in the above matter.

Very truly yours,

Frances Lippa
Administrative Hearing Officer

FL: jf/Covltr-1383

Cc: Sherry Ashkins, Law Graduate
Tiara Taylor
J. Doe
Julie Walpert
Maggie Joyner
Application Unit

AFFIRMATION

Frances Lippa, Esq., an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following on penalty of perjury:

1. I am an employee of the Division of Housing Supervision of the Department of Housing Preservation and Development of the City of New York (HPD).
2. I have been duly designated as a Hearing Officer by the Commissioner of HPD in the matter of Linden Plaza Preservation LP v. Tiara Taylor, et. al.

The attached is a true copy of my decision rendered in this matter.

DATED: March 16, 2022

Attach.

Affirm-F1901



Frances Lippa
Administrative Hearing Officer

GRANTING OF SUCCESSION RIGHTS APPEAL

HOUSING CORPORATION -
Lauren Shevit, Esq. Of Counsel
Gutman, Mintz, Baker & Sonnenfeldt, LLP
Attorney for Housing Company

Linden Plaza Preservation LP

SUBJECT PREMISES -

760 Eldert Lane
Apt. # 1 G
Brooklyn, New York 11208

LAST TENANT OF RECORD -

Ruthie Mitchell

APPLICANTS -

Tiara Taylor, J. Doe

Linden Plaza Preservation LP is an Article II housing company organized under the Private Housing Finance Law of the State of New York (P.H.F.L.), also known as the Mitchell-Lama Law. In accordance with this statute, the New York City Department of Housing Preservation and Development (HPD) has promulgated rules and regulations presently codified in the Official Compilation of the Rules of the City of New York (RCNY) which includes provisions regarding succession rights to Mitchell-Lama apartments. Title 28 RCNY subsection 3-02 (p)(8)(ii) of the aforementioned rules authorizes the Commissioner or his designee to review the housing company's determination denying an application for succession rights and issue a final agency decision with regard to an applicant's appeal.

The Commissioner's designee, Frances Lippa, has reviewed the records relied on by Linden Plaza Preservation LP and any documents submitted by Tiara Taylor and J. Doe, the applicants in opposition. The attached decision is rendered after examination of all the documentary evidence and constitutes the final agency review regarding succession rights for the applicant. The only review of this determination is pursuant to Article 78 of the Civil Practice Law and Rules.

By a letter dated July 14, 2021, Linden Plaza Preservation LP advised Tiara Taylor and J. Doe that they were not entitled to succession rights to the subject apartment.

By a submission mailed on August 13, 2021, the Legal Aid Society by Sherry Ashkins, Law Graduate, appealed the denial of succession rights to HPD and submitted documentation for consideration in the appeal.

This office, by letter dated September 8, 2021, acknowledged receipt of the succession appeal and advised that Tiara Taylor could submit additional documentation in the appeal in addition to any already supplied to the housing company. A suggested list of documents to prove primary residence, the HPD rules describing the facts and circumstances to be considered in determining primary residence, the HPD rules governing succession rights rules and a form to request certified New York State tax returns was included to help the occupants substantiate their claim.

Ms. Ashkins submitted additional documentation for consideration in the appeal.

In order to obtain occupancy rights in Mitchell-Lama housing an individual must be approved from a waiting list or qualify for succession rights according to the HPD rules set forth at 28 RCNY 3-02(p).

FINDINGS

Ruthie Mitchell is the tenant of record (hereinafter referred to as the tenant) for the subject apartment pursuant to a lease agreement dated March 1, 2006. Ruthie Mitchell died on April 7, 2020. Tiara Taylor is seeking succession rights to the subject apartment.

Tiara Taylor (hereinafter also referred to as the applicant) is a granddaughter of the tenant and thus a family member of the tenant according to the HPD definitions.

In order to prove entitlement to succession rights the applicant must prove that she resided in the subject apartment as her primary residence with the tenant for the two years immediately prior to the date the tenant vacated the subject apartment and that she was included as an occupant of the subject apartment on the relevant income affidavits or income recertifications. The applicant has the burden of proving his entitlement to succession rights. Specifically, the applicant must prove that she resided in the subject apartment as her primary residence from April 7, 2018 through April 7, 2020.

As proof of her primary residence for the requisite period, Ms. Taylor provided her New York State identification card and her New York State learner permit, W-2s for 2018 and 2020, a credit card statement and bank statements. Some, but not all of these documents include an apartment number for Ms. Taylor, but there is no evidence or suggestion that Ms. Taylor resided elsewhere during the required period.

I find that the above documents are sufficient to prove the required co-residency, particularly considering Ms. Taylor's limited income during the co-residency period.

Mr. Taylor was not included as an occupant of the subject apartment on the relevant certifications. However, pursuant to the criteria set forth in Matter of Murphy v. New York State Division of Housing and Community Renewal, under the facts of this case, Ms. Taylor is nevertheless entitled to succession rights to the subject apartment.

Tiara Taylor's succession rights appeal is granted.

This decision is without prejudice to any claims of the housing company for outstanding maintenance or other charges. This decision is also without prejudice to the HPD rules which provide that the housing company and/or HPD shall have the option of requiring any proposed

successor to move to a smaller apartment in the development in the event the apartment in question is or would become under occupied according to HPD occupancy standards.

Date: *March 16, 2022*



Frances Lipa
Administrative Hearing Officer