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"217 E. 88th St. & 212-234 E. 89th St. LLC v. Keys" (2022). *All Decisions*. 501.
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217 E. 88th St. & 212-234 E. 89th St. LLC v Keys
2022 NY Slip Op 50551(U)
Decided on June 30, 2022
Appellate Term, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
This opinion is uncorrected and will not be published in the printed Official Reports.

Decided on June 30, 2022

SUPREME COURT, APPELLATE TERM, FIRST DEPARTMENT

PRESENT: Hagler, J.P., Tisch, Michael, JJ.

570102/22

**217 East 88th Street & 212-234 East 89th Street LLC
c/o Sol Goldman Investments LLC, Petitioner-Landlord-Appellant,**

against

Ellington P. Keys, Respondent-Respondent.

Petitioner appeals from a final judgment of the Civil Court of the City of New York, New York County (Jack Stoller, J.), entered November 14, 2017, after a nonjury trial, in favor of respondent dismissing the petition in a holdover summary proceeding.

Per Curiam.

Final judgment (Jack Stoller, J.), entered November 14, 2017, affirmed, with \$25 costs.

The trial court's determination that respondent Ellington Keys, son of the deceased rent controlled tenant, met his affirmative obligation to establish succession rights to the subject apartment (*see* NY City Rent and Eviction Regulations [9 NYCRR] § 2204.6[d]), represents a fair interpretation of the evidence, and is not disturbed (*see WSC Riverside Dr. Owners LLC v Williams*, 125 AD3d 458 [2015], *lv dismissed* 25 NY3d 1221 [2015]). The record, including the testimony of respondent and four nonparty witnesses, supported the trial court's finding that respondent resided with the tenant in the apartment as his primary residence for a period of no less than two years prior to tenant's death in August 2015. This finding was also supported by documentary evidence including respondent's driver's license, financial and tax

records linking respondent to the subject premises during the two-year period.

While the record also includes leases signed by respondent for other apartments, this was explained, to the satisfaction of the trial court, as related to his business as a nightlife promoter, and corroborated by other evidence ([see *Second 82nd Corp. v Veiders*, 146 AD3d 696](#) [2017]). Similarly, the record supports the conclusion that landlord's motion-activated surveillance video was of limited relevance and reliability, since it covered only 8 months of the two-year period (ending 16 months before tenant died); the operators of the system were initially instructed to look only for tenant; and when the footage was viewed a second time to look for respondent, landlord "never introduced into evidence any written summary of the investigator's second [*2]viewing of the video evidence." Since the trial court's findings were supported by a fair interpretation of the evidence, we reject petitioner's suggestion that we should substitute our own views of the trial evidence (*see 409-411 Sixth St., LLC v Mogi*, 22 NY3d 875 [2013]; [Matter of 92 Cooper Assoc., LLC v Roughton-Hester](#), 165 AD3d 416, 417 [2018]; [Matter of 135 West. 13 LLC v Stollerman](#), 151 AD3d 598 [2017]).

We have considered petitioner's remaining arguments and find them to be without merit.

All concur

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

Clerk of the Court

Decision Date: June 30, 2022

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