

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

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1199 CORPORATION,

Petitioner/Landlord,

Index No. 86696/2015

- against -

DECISION/ORDER

SHIRLENE LEE, et al.,

Respondents/Tenants.

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Present: Hon. Jack Stoller
Judge, Housing Court

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Supplemental Affidavit and Affirmation Annexed.....	1, 2, 3
Notice of Cross-Motion and Supplemental Affidavit and Affirmation Annexed	4, 5, 6
Affirmation In Opposition and In Reply	7
Reply Affirmation	8
Supplemental Affirmation	9

Upon the foregoing cited papers, the Decision and Order on this Motion are as follows:

1199 Corporation, the petitioner in this proceeding (“Petitioner”), commenced this holdover proceeding against Shirlene Lee (“Respondent”) and Terrell Pritchett (“Co-Respondent”), the respondents in this proceeding (collectively, “Respondents”), seeking possession of 420 East 111th Street, Apt. 1508, New York, New York (“the subject premises”) on the ground that the subject premises is a cooperative organized under Article II of the Private Housing Finance Law (commonly known as “Mitchell-Lama” housing) regulated by the Department of Housing Preservation and Development of the City of New York (“HPD”) and that HPD issued an administrative order known as a “certificate of eviction” which authorizes

this holdover proceeding. Respondents interposed an answer. Petitioner now moves for summary judgment in its favor. Respondents cross-move for summary judgment dismissing this proceeding or, in the alternative, for a stay. The Court consolidates these motions for resolution herein.

Petitioner proves by its motion that it is a proper party to commence this proceeding pursuant to RPAPL §721; that the subject premises is subject to the Mitchell-Lama law and regulated by HPD; that HPD issued a certificate of eviction finding that the prior authorized occupant of record of the subject premises (“the prior tenant”) had vacated the subject premises and that Respondent was not entitled to succeed to any type of tenancy at the subject premises; and that Petitioner properly effectuated service of a predicate notice upon Respondents pursuant to RPAPL §713.

Chapter 3 of Title 28 of the Rules of the City of New York vests HPD with supervisory authority over occupancy of City-aided Mitchell-Lama housing. This authority confers HPD with exclusive jurisdiction to determine tenant eligibility in such housing, 158 St. & Riverside Dr. Hous. Co., Inc. v. Eccleston, 38 Misc.3d 132(A) (App. Term 1st Dept. 2013), and HPD’s issuance of a certificate of eviction cannot be collaterally attacked in a subsequent summary proceeding. Bedford Gardens Co., LP v. Jacobowitz, 29 A.D.3d 501, 502 (2nd Dept. 2006), Gouverneur Gardens Hous. Corp. v. Belmlinsky, 23 Misc.3d 126(A) (App. Term 1st Dept. 2009). Accordingly, Petitioner has demonstrated a *prima facie* entitlement to a judgment on its summary judgment motion and the burden thus shifts to Respondents to produce evidence in admissible form to demonstrate the existence of a disputed material issue of fact sufficient to require a trial.

SRM Card Shop, Inc. v. 1740 Broadway Assocs., L.P., 2 A.D.3d 136, 139-140 (1st Dept. 2003).

Respondents cross-move to dismiss on the ground that Petitioner had constructive, if not actual, notice of Co-Respondent's occupancy of the subject premises and did not identify him by name in the petition, using instead the alias "John Doe." However, a birth certificate Respondents annex to their papers shows that Co-Respondent was born on July 16, 1998. As of this writing, on June 3, 2016, Co-Respondent is seventeen years old. A petitioner in a summary proceeding has no obligation to name minor children living with a respondent therein. Daley v. Billinghamurst, 5 Misc.3d 138(A) (App. Term 2nd Dept. 2004), *citing* Loira v. Anagnastopolous, 204 A.D.2d 608, 609 (2nd Dept. 1994). Accordingly, the Court denies so much of Respondents' cross-motion as seeks summary judgment and dismissal.

Respondents also move to stay this proceeding pending the application of Co-Respondent to succeed to the tenancy of the prior tenant pursuant to 28 R.C.N.Y. §3-02(p)(8). While Petitioner has rejected Co-Respondent's application, Respondents show that Co-Respondent has appealed this decision to HPD pursuant to 28 R.C.N.Y. §3-02(p)(8)(ii). Under some circumstances, it is appropriate to stay a summary proceeding pending the outcome of another proceeding, which outcome may determine issues in the summary proceeding. *See, e.g., Maguire v. Ardea Realty Corp.*, 279 A.D. 904 (1st Dept. 1952), Boca Broadway Realty Co. v. Naim, N.Y.L.J. June 8, 1995 at 31:5 (App. Term 1st Dept.), *leave to appeal denied*, 1996 N.Y. App. Div. LEXIS 8474 (1st Dept. 1996), Ennismore Apartments v. Gottlieb, NYLJ, Sept. 24, 1992, at 24:5 (App. Term 1st Dept.). The Court may enter such a stay when a determination of another action may dispose of or limit issues involved in a present action, SSA Holdings LLC v. Kaplan,

120 A.D.3d 1111, 1111-12 (1st Dept. 2014), 952 Assoc., LLC v. Palmer, 52 A.D.3d 236, 236-37 (1st Dept. 2008), and when the Civil Court is without authority to grant the relief sought. Scheff v. 230 E. 73rd Owners Corp., 203 A.D.2d 151, 152 (1st Dept. 1994). As HPD's jurisdiction to determine Co-Respondent's succession claim is "exclusive," 158 St. & Riverside Dr. Hous. Co., Inc., supra, 38 Misc.3d at 132(A), and as Co-Respondent's continued right to occupy the subject premises hinges on the outcome of the administrative proceeding at HPD, that proceeding is therefore determinative of the outcome in this matter.

As a stay is equitable relief, CPLR §2201, the Court also takes into consideration the likelihood that Co-Respondent's succession application will be approved. See Thornton v. New York City Board/Dept. of Education, 125 A.D.3d 444, 445 (1st Dept. 2015). Co-Respondent proved on his submission by the aforementioned birth certificate that he is the son of the prior tenant and thus a family member as defined by the applicable regulations. 28 R.C.N.Y. §3-02(p)(2)(ii). Tenants in Mitchell-Lama housing are required to complete annual affidavits stating, *inter alia*, the household composition, 28 R.C.N.Y. §3-03(c)(1)-(3), and Respondents annex proof that Co-Respondent appeared on those affidavits in the two years prior to the vacatur of the prior tenant. A family member who resides with a tenant for two years before the tenant vacates has the right to succeed to that tenancy. 28 R.C.N.Y. §3-02(p)(3). In the contexts of other regulated housing, a family member's right to succeed to a tenancy does not diminish just because that family member is a minor child. See Swann v. Finkel, 295 A.D.2d 116, 117 (1st Dept. 2002)(applying this principle, taken from the context of the Rent Stabilization Law, and applying it to remaining family member applications in New York City Housing Authority

tenancies), Doubledown Realty Corp. v. Harris, 128 Misc. 2d 403, 403-404 (App. Term 1st Dept. 1985). Accordingly, the Court finds that Respondents have shown, as a *prima facie* matter, a sufficient likelihood of success on the merits to warrant a stay.

Petitioner argues that Co-Respondent's succession application is time-barred because his right to succeed would have accrued upon the vacatur of the prior tenant and that the prior tenant vacated more than six years prior to Co-Respondent's application. Respondents dispute that any statute of limitations, much less a six-year statute of limitations, bars Co-Respondent's application. Even assuming *arguendo* that such a statute of limitations applies, however, Co-Respondent has been a minor child for the entire time period following the prior tenant's vacatur. The statute of limitations is tolled until a minor child reaches majority, CPLR §208, even if someone acting in the capacity of a guardian took action on behalf of the minor child before the child reached majority. Henry v. City of New York, 94 N.Y.2d 275, 279-80 (1999).

Accordingly, the Court grants Respondents' motion to stay further proceedings in this matter, pending the outcome of the succession application filed on behalf of Co-Respondent with HPD, conditioned upon Respondents' remaining current with use and occupancy obligations. Either party may move to restore this proceeding for any relief on motion.

This constitutes the decision and order of this Court.

Dated: New York, New York
June 3, 2016



HON. JACK STOLLER
J.H.C.