

**1069 Bedford LLC, Petitioner v. Isiah Montgomery, Respondent, 53471/14
53471/14**

Civil Court, Kings County, Housing Part O

NYLJ Publication Date: Mar 04, 2015

Cite as: 1069 Bedford LLC v. Montgomery, 53471/14, NYLJ 1202719414710, at

*1 (Civ., KI, Decided January 29, 2015)

53471/14

Judge Gary Marton

Read Summary of Decision

Decided: January 29, 2015

ATTORNEYS

Petitioner's counsel: Jonathan S. Roller, Brooklyn, NY.

Respondent's counsel: The Legal Aid Society, Brooklyn Office for the Aging by
Diana Vaynsenker and Aurore DeCarlo.

*1

The above-captioned is a holdover proceeding predicated upon the allegation that respondent is a licensee. After considering the testimony and the other evidence at the trial, the court makes the following findings of fact, reaches the following conclusions of law, substitutes "Isiah Montgomery" for respondent "John Doe," holds that respondent prevailed on his affirmative defense of succession, and grants him a judgment of possession dismissing this proceeding.

The premises at issue is a rent-stabilized apartment. By a deed dated November 13, 2006 petitioner became the owner and landlord thereof. Betty Spencer was the tenant of record. Her most recent lease renewal was for one year beginning May 1, 2013 at a monthly rent of \$559.83. She died on November 16, 2013.

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Roughly three months later petitioner began this proceeding. Respondent defended on the ground, among others, that he had a right to succeed to Betty Spencer's tenancy. In support he alleged that he and Betty Spencer had lived together at the premises as a non-traditional married couple for the 25 years that ended with her death.

The Rent Stabilization Code ("RSC") provides at 9 NYCRR §2520.6(o)(2) that an occupant of rent-stabilized premises may succeed to the tenancy of the co-occupying tenant of record upon the tenant's vacating the premises, even if the occupant is not a member of the tenant's family, if the occupant can demonstrate

that the premises was his primary residence until the vacatur, and that there was an "emotional and financial commitment, and interdependence between such person and the tenant."

It is uncontested that respondent was born in 1949. Inasmuch as respondent was a senior citizen at all pertinent times, the requisite period of co-occupancy is one year, 9 NYCRR §2523.5[b][1]. Here that year began on November 17, 2012.

Anthony Spencer testified that he is a son of Betty Spencer, that he lives elsewhere in Brooklyn, N.Y., and that he lived at the premises from 1988 to 1994 and from 1999 to 2000. He testified that during these two periods he slept in the living room of this one-bedroom apartment and that he saw that his mother and respondent slept in the bedroom.

*3

He testified that his mother suffered from diabetes, that in 2002 she was diagnosed with breast cancer, that by 2004 his mother could no longer climb unaided the two flights of stairs to the premises, and that as his mother grew sicker and sicker, the care that respondent took of her grew greater and greater. He testified that in recent years and until her death he visited his mother and respondent at the premises as often as five and six times per week, and that respondent was always there.

The court finds that Anthony Spencer's testimony was credible and that it was probative both of respondent's residence at the premises and of the emotional commitment and interdependence of respondent and the tenant of record.

Michael Spencer testified that he is a grandson of Betty Spencer, that he lives elsewhere in Brooklyn, N.Y., that he is 32 years old, and that until her death he visited her at the premises frequently. He testified that he has always thought of respondent as a "step-grandfather"; and he testified that he remembered celebrating at the premises as early as 1988 annual holidays such as Easter and Thanksgiving, and that his grandmother and respondent were invariably present. He testified that after 2007 or 2008, when his grandmother was no longer able to cook, respondent cooked for both of them. He testified that they bickered and "argued like an old married couple."

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The court finds that Michael Spencer's testimony was credible and that it was probative both of respondent's residence at the premises and of the emotional commitment and interdependence of respondent and the tenant of record.

He testified as well that his grandmother's monthly income was \$800-\$900, that respondent's was \$700-\$800, and that respondent paid the monthly rent and all of the other household bills with money that he withdrew from either his bank account or hers. Michael Spencer testified that on many occasions he accompanied respondent to one bank or the other to withdraw cash for the purpose of paying these bills.

The court finds that this testimony was credible and that it was probative of the financial and emotional commitment and interdependence of respondent and the tenant of record.

Respondent testified that he began living at the premises with Betty Spencer some 24 or 25 years before her death and that he has not lived at any other place. The court finds that this testimony was credible. Respondent also introduced into evidence documents that corroborated his use of the premises' address as the address of his primary residence. These included banking records from February, 2011 to November 2013, applications for SNAP assistance (often called "food stamps") filed in 2004, 2005, 2007, 2009, and 2011, and correspondence from the Social Security Administration dated as early as May, 2011.

*5

He offered and the court accepted in evidence five photographs showing himself and Betty Spencer in an affectionate relationship with each other celebrating family events at the premises and elsewhere. These, the court finds, were probative both of their residence together at the premises and of their emotional interdependence and commitment to each other. He testified that they slept not in separate rooms but in the bedroom. He testified that he shopped for groceries for the household and that as she became sicker and sicker, he bathed her, dressed her, and otherwise took care of her when the assigned home health aide, eventually succeeded by a nurse, was not present. The court finds that this testimony was credible and probative both of their residence together at the premises and of their emotional interdependence and commitment to each other.

He testified that during the period April, 2014 through September, 2014, when Betty Spencer was for much of the time an in-patient at the Atlantis Rehabilitation and Residential Healthcare Facility Nursing Home, he visited her almost every day. The court finds that this testimony was credible and that it was corroborated by Atlantis' visitor log sheets. These sheets, the court finds, are also probative of respondent's emotional commitment to and interdependence with Betty Spencer.

Petitioner sought to rebut this showing by pointing out that respondent and the tenant of record had separate, but not joint, bank accounts. The court gives little probative weight to this showing because respondent had access to the *6 tenant's bank account as freely as he had access to his own. Their combined incomes were only just enough to pay the rent and the other expenses of daily living; the court fails to see that respondent and the tenant would have been more interdependent financially had the two accounts been merged into one. Cf, *Roberts Avenue Assoc. v. Sullivan*, 2003 NY Sip Op 51091(U) (App Term, 1st Dep't, 2003) where the court wrote "[t]he absence of documentary evidence of intermingling of finances does not undermine respondent's claim where the parties had limited assets, and where other criteria for succession are present"

Petitioner also showed that each of respondent's SNAP applications in 2004, 2005, 2007, 2009, and 2011 included a statement that he lived alone and a statement that no one else living at the premises had any income. These statements were not true and this falsity gives the court some pause. But the forms are lengthy and they include numerous unnumbered questions as well as a clutter of warnings and notices in bold capitals, i.e., the visual organization of the forms is weak and they provide many opportunities for distraction and missteps.

In addition, the forms anticipate that their filings may be made by someone other than the applicant; at the bottom of the fifth page each form states: "If you are applying for someone else as an authorized representative, print your name and address here. You may also voluntarily print your phone number." On respondent's SNAP applications filed in 2007 and 2009, Betty Spencer wrote that she was applying on respondent's behalf even though his signature appears *7 immediately above hers and she listed the premises apt. 3D at 1069 Bedford Avenue, Brooklyn, N.Y. as her own address even though elsewhere on the form respondent states that he lives at the premises alone¹. Yet on the following page, without correction or request for amendment or clarification, the State of New York's signed approval is plain to see. The court holds that the misstatements on the SNAP forms do not put in doubt respondent's testimony that the premises was his primary residence and that he lived there with Betty Spencer as his de facto spouse.

Accordingly, the court grants the relief set out above. The court will mail copies of this decision to the parties, and they are requested to retrieve promptly their exhibits.

Dated: January 29, 2015
Brooklyn, NY

1. By filing on behalf of respondent false statements with the government, Betty Spencer risked a felony conviction for perjury. Were this evidence necessary to decide this holdover proceeding, the court would find that taking this risk was probative of her emotional commitment to him.