

Landlord-Tenant Monthly

Volume 3 Issue 11

November 2005

Off The Record
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Despite Absence, Son Earns Succession Rights Succession Rights H.P.D Frances Lippa, A.H.O.

When the tenant of the Mitchell-Lama apartment in question died on August 6, 2003, the deceased tenant's son sought succession rights to the apartment and had to prove that the apartment in question was his primary residence from August 6, 2001, through August 6, 2003. According to the Court in *Chinatown Apartments, Inc. v. Chan*, the deceased tenant's son was entitled to succeed to the unit despite attending college during the period in question, and despite the deceased tenant's failure to include his son on the relevant income affidavits/income re-certifications, as required by HPD rules.

According to HPD requirements, an occupant must be included on the relevant income affidavits or income re-certifications in order to be eligible for succession rights after the tenant of record has died or permanently vacated the apartment. Here, the deceased tenant listed his son as an occupant of the subject apartment on his income recertifications dated June 2001 and August 2002. However, on the income re-certification of April 2003 the deceased tenant was listed as the sole occupant of the subject apartment and the words "moved out" were listed adjacent to the son's name. However, according to a 2003 worksheet attached to that year's re-certification, the deceased tenant did not make any mention of his son moving out. Thus, there was a discrepancy between the April 2003 recertification and the 2003 worksheet.

Of particular importance to the court was the fact that the deceased tenant had a limited ability to speak English and could not read nor write in English. These inabilities, together with the discrepancies between the April 2003 re-certification and the 2003 worksheet, prevented the court from relying on the April 2003 re-certification statement for the purpose of denying the son's succession claim.

Rather than rely on the re-certification statement, the Court acknowledged that according to HDP rules, absence from an apartment is excused for an occupant who is a full-time student. The deceased tenant's son was a student at Notre Dame from August 1999 through May 2003. This, together with the fact that while attending college the son listed the subject premises as his primary residence and had his credit card and banking statements sent to the subject premises, allowed for the Court to conclude that the son continued to use the subject apartment as his primary address between May 2003 and August 6, 2003, the date of his father's death. Thus, the Court granted succession rights to the decedent tenant's son.

Case: *Chinatown Apartments, Inc. v. Henry Chan*
(HUD Office of Housing Operations N.Y. Co.; **030705; 5 pages.)

Our thanks to Adam Leitman Bailey, Esq. of the Law Firm of Adam Leitman Bailey, P.C. for sharing this decision with our readers. Mr. Bailey represented the tenant in this matter.