

How Do I Assert Succession Rights to a Rent Regulated Apartment?

What are succession rights?

Succession rights allow a remaining occupant to become the official tenant of record of an apartment when the prior tenant of record permanently vacates the apartment either by moving out and notifying the landlord, or by dying. The successor retains all the same rights and privileges granted to the previous tenant.

Who can claim succession rights?

The law grants succession rights to two categories of persons, “traditional family members” and “non-traditional family members.” The apartment must be your current primary residence and you must have resided with the former tenant of record for at least two years prior to the departure or death of the former tenant, or one year if you are either disabled or a senior citizen. If you left the apartment to perform military service or to enroll as a full time student, or if you were hospitalized or temporarily relocated due to employment or other reasonable grounds, you may also claim succession rights.

Who is considered a “traditional family member”?

“Traditional family members” include only spouses, children, parents, stepchildren, stepparents, siblings, grandparents, grandchildren, parents-in-law, and children-in-law. Cousins, aunts, uncles and other distant relatives are not deemed “traditional family members” for purposes of succession.

What is a “non-traditional family member”?

“Non-traditional family members” are occupants who are not immediate family members, but who can demonstrate that they shared a close, family-like relationship with the vacating leaseholder. This includes, *but is not limited to*, aunts, uncles, nieces, nephews, cousins, unmarried couples, lesbian and gay couples. To qualify as a non-traditional family member, you need to demonstrate a strong emotional and financial relationship with the previous tenant that resembles an immediate familial relation. Simply stating that you are related by blood to the vacating tenant is not sufficient by itself to establish succession rights as a non-traditional family member.

What can I use to prove that I shared a close relationship with the former tenant of record?

Important factors the court will consider in determining whether there was a nontraditional family relationship are: the length of the relationship, the sharing of or relying upon each other for household expenses, joint bank accounts, joint credit cards, joint child rearing, participation in family-type activities such as attending family events, vacationing or dining together, formalized legal obligations, intentions, and responsibilities such as granting each other a power of attorney, holding yourself out as family members through words or actions, regularly performing family functions like attending doctors’ appointments, etc. This list is not determinative. The more factors you can show, the more successful you will be in establishing a family relationship.

What should I do to protect my claim to the apartment?

When you move into the apartment, make sure to inform the landlord of your presence and make sure all official documents, such as mail, taxes, medical records and the like have your new address on them. If you contribute to the rent, make sure you document that your money is going towards the rent of that

specific apartment. It is not to your benefit to deceive the landlord about your presence in the apartment, and such actions can often ruin your chance to succeed to the tenancy in the future.

What happens once the tenant of record has vacated the apartment?

You should immediately inform the landlord that the previous tenant no longer lives in the apartment, and ask the landlord to provide you with a lease in your own name. It is best to document this request by sending the landlord a letter via certified mail, return receipt requested. Be sure to correspond and document all interactions with landlord in writing. You should also convert all utility bills into your name. Begin to pay the rent in your own name. If the landlord does not accept your rent payment, make sure you hold on to it -- you will eventually have to pay all back rent owed to successfully have the apartment converted to your name.

What actions should I avoid if I plan on claiming succession rights?

Do not sign a lease in the former tenant's name. This is considered fraud and will diminish your chances of succeeding to the lease.

You should not do anything that might give the impression that the former tenant of record still lives in the apartment or that might give the impression that you do not live there. For example:

- Do not have the former tenant come visit you too frequently.
- Do not allow the former tenant to leave belongings in the apartment.
- Do not keep utility bills under the former tenant's name.
- Do not have your mail sent to other addresses or post office boxes.
- Do not maintain any ties to other residences.
- Avoid paying the rent in cash unless you get a receipt made out in your name.

Finally, it is important to create a documented record that you are paying the rent, so paying with a check or money order is preferable. Avoid paying the rent in cash unless you get a receipt in your own name.

Can the landlord raise my rent when I succeed to an apartment?

For Rent Stabilized and Rent Controlled apartments, the rent will remain the same, except for yearly increases as decided by the Rent Control Board. In Rent Stabilized apartments, after every other succession, the landlord is entitled to a vacancy increase, which can be about 20% of the rent, every second succession.

What can I do to help strengthen my succession claim when the previous tenant was not a family member or like a family member?

When your name is not on the lease, and you did not share a family or family-like relationship with the former tenant, the landlord is not required to keep you on as a tenant. However, the landlord can make you a tenant by agreeing to put your name on a lease.

If you live in a non-rent regulated apartment, such as NYCHA public housing, a market-rate apartment, or a building run by a non-profit organization, different rules of succession may apply. You should contact a legal services agency to determine what set of rules applies to the apartment to which you seek succession rights.