

H O U S I N G I N S I G H T S

The Voice of the Small Property Owners of New York

JULY – SEPTEMBER 2008

OWNERS TURN OUT IN RECORD NUMBERS, AND THE RENT GUIDELINES BOARD HEARS US

by Jimmy Silber

Small property owners turned out to the Rent Guidelines Board hearings and the final vote in the largest numbers in the last 15 years. The soaring cost of oil has created a desperate situation for all owners. How can fuel have skyrocketed by over 100% and rent increases remain a paltry 3%? Owner after owner testified that it is impossible to run a building when our costs go up tremendously each year, but our income in rent is always regulated to the bare minimum. Nobody in this capitalistic society can run a business when the expenses exceed the income. So why is it expected that an individual man or woman who owns a building can possibly make it under these conditions? If government feels that some tenants must be subsidized in the rent they pay, then why doesn't the burden for providing this subsidy get shared by all of society at large? Why is the individual property owner singled out as the one who must provide this subsidy? Enough is enough, and property owners turned out to voice their disgust and disapproval with the way our State and City governments regulate this system.

Owners of small buildings are being killed by the low rents of tenants who have been in place for many, many years. It is now common to actually see the rents of long-term rent stabilized tenants lower than the rents of rent controlled tenants in the same building. And rent stabilization was supposed to be a less onerous system than rent control. Oh, how our elected officials have failed us!

Small owners have been asking for help with low rent long-term tenants for years, and this year the Rent Guidelines Board, for the first time in history, has finally heard our pleas and taken action.

The Rent Guidelines Adjustments for rent stabilized apartments where leases expire between October 1, 2008 and September 30, 2009 and the Owner provides heat, are as follows:

For a 1 year renewal 4 ½%
For a 2 year renewal 8 ½%

IF THERE HAS BEEN NO VACANCY IN THE APT FOR THE
LAST 6 YEARS, THEN THE INCREASE IS:

For a 1 year renewal 4 ½% OR \$45, whichever is greater
For a 2 year renewal 8 ½% OR \$85, whichever is greater

If the Owner does not provide heat, the guidelines are 4% and 8% or \$40 and \$80, applied in the same manner.

STATE LAW VACANCY INCREASES AND LOW RENT ADJUSTMENT

Under State law, vacancy increases are 20% for a two-year lease and 16% for a one-year lease.

Add .6% (.006) per year if the last vacancy was more than eight years ago. For rents starting under \$300.00, you may charge the vacancy allowance plus \$100.00 on vacancy. Between \$300 and \$500, the vacancy increase is the greater of the percentage increase or \$100.00.

FOR A VACANCY, USE EITHER THE GUIDELINES INCREASES OR THE VACANCY ALLOWANCE – DO NOT USE BOTH.

Finally, after almost 40 years, the RGB has made an attempt to equalize and create some kind of fairness and equitable understanding of the plight of the small property owner. While this year's increase of 4 ½% barely makes a dent in the horrible under compensation of rent increases for property owners in the past, the longevity increase does offer us a glimmer of hope for continued adjustments in the future.

In a statement prepared by Marvin Marcus, Chairman of the Rent Guidelines Board, and read at the final vote, Mr. Marcus said, "It is undoubtedly the case that this board has under compensated owners for expenses incurred in 2003 and beyond."

Well, hallelujah! It is about time that someone in a leadership role in government has come to their senses. Congratulations to Mr. Marcus for being brave enough to reveal the truth. If only the rest of our elected officials had any kind of backbone to acknowledge the same truths about the inequitable system of rent regulation and stop their pandering to tenant organizers.

If we as owners learned one thing this year, it is that if we turn out in large numbers and voice our disapproval with our government, we will indeed be heard. We encourage all members of SPONY to become more active and join hands together to make the voice and the plight of the small property owner louder and even more effective next year.

WHEN THE CITY DOES REPAIRS

The concept behind HPD's Emergency Repair Program (ERP), is that a "bad" owner doesn't make repairs. The "good" city (HPD) is called in to do the work. The tenant is happy. The owner is billed and everything is o.k., right? No! Everything is not right...in fact, anything that could go wrong usually does in this scenario. The problem is complex but focuses on five main issues: 1) The city ignores the owner's response that he has done the work and it is not necessary to send a contractor. 2) The owner is never informed of the work appointment so that he can be present. 3) Work is done by the ERP contractors in a shoddy manner or not at all. 4) The owner is billed an exorbitant amount of money for the questionable work. 5) There is no way

the owner can protest the work and/or charges that results in a fair and equitable resolution.

In an effort to resolve these problems with the city agency HPD, owner groups SPONY and CHIP are in the process of meeting with HPD, and Ed Korman (representing SPONY) will report on the results of these meetings in our next newsletter. In the meantime, **IF YOU HAVE A PROBLEM WITH ERP WORK AND/OR BILLS, IT IS ESSENTIAL YOU CONTACT US. SEND US THE DOCUMENTATION WITH A CONCISE EXPLANATION OF THE PROBLEM(S) AND WE WILL HELP YOU.** Mail the information to SPONY at 1681 Third Avenue, New York, NY 10128.

**CODE CHANGES AFFECT BOILER FILINGS : IT IS NOW DUE IN MID NOVEMBER
YOU ARE NOW REQUIRED TO INSULATE ALL PIPES AND
HARD WIRE THE BOILER ROOM SMOKE DETECTOR**

DO THESE THINGS ON A TIMELY BASIS OR LOSE

PETS

If your tenant has a pet in violation of their lease, it is incumbent upon you to start action against them (including the initial letter to remove the pet and subsequent court action if they fail to do so) within a three-month period. Recent court rulings found against owners because they waited more than three months to start eviction proceedings based on the no-pet clause in the lease.

WASHING MACHING AND AIR CONDITIONING SURCHARGES

Add the allowable surcharge immediately upon discovering a washing machine, clothing dryer, dishwasher, or a tenant-owned air conditioner that extends beyond the building line. If the tenant pays for electricity (the typical situation), the charge for each air conditioner is \$5.00, for a washing machine it is \$13.62, and for a dishwasher the charge is \$3.77. (The charges for washing machines and dishwashers is absurdly low – especially in these times of rising fuel and water costs. RSA, CHIP, and SPONY have brought this issue before the DHCR at the owners' forum meetings.)

YOU SHOULD KNOW THE FOLLOWING: YOU MAY BE STILL BE HELD RESPONSIBLE FOR VIOLATIONS to your building even if the property is owned by a corporation or LLC. The key factor is who controls the property. If you are a principal of the LLC and have control of the building on the dates of the violations, you may be held personally liable.

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LEASE FORMS TO GIVE TENANTS

Last year, when we planned the SPONY membership meeting on the subject of selecting tenants and the proper forms to give them, we didn't think there would be a large turn-out, so we were surprised to find that we had standing-room-only. Lots of good information was shared and, reminiscent of meetings in the past, members were reluctant to leave when the meeting was over. It seems timely to publish a summary of the forms now, in the same issue with the new rent guidelines.

REGULATED VACANCY LEASES

1. THE VACANCY LEASE
2. TENANTS' RIGHTS RIDER
3. WINDOW GUARD NOTICE **
4. LEAD PAINT
 - a. NYC DEPT HEALTH PAMPHLET "INFORMATION FOR TENANTS"
 - b. NYC RIDER APPENDIX A **
 - c. FEDERAL GOVERNMENT EPA PAMPHLET ON "PROTECTING YOUR FAMILY"
 - d. FEDERAL LEAD DISCLOSURE**

REGULATED RENEWAL LEASES

1. RENEWAL LEASE 90-120 days prior to expiration of lease certified mail
2. TENANTS' RIGHTS RIDER
3. WINDOW GUARD NOTICE
4. LEAD PAINT
 - a. NYC DEPT HEALTH "INFORMATION FOR TENANTS"
 - b. NYC RIDER APPENDIX A

** these forms are found with RSA's regulated vacancy lease; You can also find them on our website www.spony.org

YOU MUST GIVE WINDOW GUARD NOTICES TO DEREGULATED TENANTS (NYC ADMINISTRATIVE CODE 17-123)

YOU MUST GIVE LEAD PAINT NOTICES TO DEREGULATED TENANTS (LOCAL LAW #1)

ANNUAL NOTICES: THE WINDOW GUARD AND LEAD PAINT ARE COMBINED ON ONE FORM MAILED EVERY JANUARY FOR BOTH REGULATED AND NON-REGULATED UNITS. RECORDS MUST BE KEPT FOR 10 YEARS. OWNERS MUST MAKE SURE THEY GET THE FORMS BACK FROM THE TENANTS AND DO VISUAL INSPECTIONS FOR LEAD HAZARDS AND THE PRESENCE OF CHILDREN.

(NO CARBON MONOXIDE OR SMOKE DETECTOR RIDERS REQUIRED – clauses part of lease)

REMEMBER, IF YOU ARE RECEIVING J-51 OR 421-A BENEFITS, AND YOU DON'T INCLUDE THE APPROPRIATE RIDER WITH EACH VACANCY AND RENEWAL LEASE, THE APARTMENT WILL NOT BE ELIGIBLE FOR DEREGULATED STATUS WHEN THE TAX BENEFITS EXPIRE.

FOR APARTMENT DEREGULATED THROUGH LUXURY DECONTROL, NEVER GIVE A REGULATED LEASE.

RENEWAL FACTS YOU SHOULD KNOW

If you don't offer your renewal lease in a timely fashion (90-120 days before the expiration of the current lease) the tenant isn't obligated to pay the rent increase until 90 days have elapsed from the date it is received. Therefore, if you are a month or two late in sending your renewals, you are at risk of forfeiting a month or two of rent increase.

If you do send your lease renewal in a timely fashion and the tenant fails to sign and return it to you within 60 days from the time it was sent by certified mail, you may consider it a deemed lease. This means that you may legally collect the increase that would have been in effect had the tenant signed a one or two year lease (whichever they have historically chosen). In order to use the deemed lease concept and get your new rent, it is essential that the renewal was mailed in the approved manner. Keep the certified mailing receipt – and any unopened returned mail – so that you have proof should the new rent be challenged in the future.

Moreover, if the tenant in question is paying a preferential rent, the deemed lease increase may be based on the legal regulated rent and not the preferential rent.

We advised you in previous newsletters that if you are charging a preferential rent, you are allowed by the DHCR to charge the legal regulated rent upon renewal. However, we remind you that you must have the proper wording in both your vacancy lease and renewal leases: you must specify that the preferential rent is for a limited time, or you may be stuck with the preferential rent (and

DEREGULATED VACANCY LEASE

- 3 FAMILY AND ABOVE
1. VACANCY LEASE
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increases based on the preferential rent) until the termination of the tenancy.

LUXURY DECONTROL

We informed you in our January 2008 newsletter that the courts determined that tenants holding a visa were not entitled to the protection of regulation since, by definition, they can't have their primary residence in New York if they are only in the United States on a temporary basis. In an interesting turn of events, an owner applied to DHCR for high rent/high income decontrol of an apartment. The tenant said he didn't have to produce the required income tax returns because he wasn't required to file them due to his visa status. The DHCR agreed and the owner lost the case. While it would be beneficial to the owner to have formal deregulated status, he clearly wasn't aware that the tenant was not protected by stabilization laws since he was not a primary resident. Although the owner lost the case on a technicality, he actually won – the tenant was not entitled to, nor protected by, rent stabilization rules and regulations.

If you have an apartment that is no longer regulated based on luxury decontrol, it is essential that you offer the first tenant a vacancy non-regulated lease at market rent (including subsequent non-regulated lease renewals) or you may forfeit the decontrol status. When the apartment is first deregulated, make certain that you have filed the final RR1 with DHCR and give the new tenant a copy so that the deregulated status is legally established.