

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

October – December 2010

FORGING SECTION 8

Recently, both the NY State Assembly and State Senate passed bills (A10689 & S7613-A) which would force owners to accept tenants, regardless of the source of their legal income. The bills specifically force owners to accept Section 8 tenants, despite the fact that the Federal government has ruled that acceptance of the program by property owners is voluntary. Even extremely liberal California agrees that it should be voluntary – but apparently New York City, which passed local law 10 in 2008, doesn't agree. The state's bills are more extreme than the city's bill because they include all rental properties down to two family, whereas the city's bill excludes properties with 5 or fewer units.

SPONY reached out to its members and thanks, in part, to their response, Governor David A. Paterson vetoed the bill in August. Following are excerpts from the governor's comments which include points made by SPONY members:

" This bill was prompted by very significant policy concerns. Holders of Section 8 vouchers often find it difficult to locate housing because many property owners do not rent to Section 8 tenants. It was not so long ago that advertisements for apartments explicitly included "No Section 8." For the Section 8 program to be meaningful, enough units must be made available for Section 8 tenants. A healthy Section 8 program is particularly critical in times of economic crisis.

Nonetheless, with regret I am compelled to veto the bill, both because of the heavy burden it would place on small New York property owners at a time when they are struggling to pay their mortgages and maintain their homes, and because of its impact on the State's finances.

When a landlord accepts a Section 8 voucher, the unit is taken off the market while inspections and paperwork are completed. Rent is not collected on the unit during this time, which can total three months or more. In addition, housing units are subject to annual inspections and Section 8 payments are suspended until violations are rectified. A small landlord may have no funds to pay for repairs while payments are being withheld. Even when violations are the result of a tenant's actions and no fault of the landlord, landlords are not allowed to bring nonpayment cases to Housing Court for the Section 8 portion of the rent.

The limitations placed on a landlord in regard to Section 8 vouchers are a necessary part of a valuable housing program, but for small landlords, they can be very onerous. For that reason, local laws that bar discrimination on the basis of source of income often carve out such property holders. New York City's anti-discrimination law, for example, exempts owners of buildings with five or fewer apartments. This bill, in contrast, applies to every property owner in New York State but those who occupy one unit of a two-family home.

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BEWARE OF SHARKS

by Dina Edmonds

I have been contacting SPONY for help since 2007, when I started having problems managing and keeping my building due to the interference of city agencies and professional tenants. I have had my building for several years and originally only had tenants who were not receiving rent subsidies. When I started taking tenants who received rent subsidies, I didn't realize that some were professional tenants and knew how to work the system so they could live rent-free (for their portion of the rent). They would regularly call HPD to write violations and refused to give me access. Ultimately, this resulted in HPD making unnecessary and costly repairs and then placing liens on the building for the repair charges when I failed to meet the deadline to pay them.

By 2008 HPD had seized my bank accounts and I did not have proper counsel to dig me out of the hole, resulting in my business account being frozen for over a year. I was unable to deposit rent checks or write checks, including mortgage payments. Making matters worse, HPD had advised the three tenants they were working with not to pay rent, so I only had half of the rental income I should have been receiving. I tried to get a second mortgage or personal loan to pay the liens on the building and other expenses that were now in arrears. I failed since my credit rating had dropped from 720 to 500. Finally, I turned to the bank that held my first mortgage.

The original building mortgage was first held by Greenpoint Savings Bank, then by Norfolk and then by Capital One. Capital One refused to work with me. I wrote to the Mayor's office, OCC, and even Washington. But, because it is a six family residential building, it did not fall under Obama's programs that regulate and force banks to modify loans on primary single family homes.

After the OCC investigated, Capital One sent me a workout package in September 2009. The arrangement was to pay a certain amount of the debt and the balance would be spread over 5 years in addition to my regular monthly mortgage payment. I sent over tax returns, documents, building registrations, and all other required paperwork. Yet, the bank once again started delaying the processing of the workout loan, ultimately refusing to modify the loan.

I was then contacted by Eli Davidovics of Minotaur Management who sent me the following E-mail:

"We are a real estate investment and management company, in New York. We buy defaulted mortgages from banks and try to convince borrowers/owners to pay us the outstanding balance. One way they can do that is by short sale, either to us or someone else. That is not the only way, though. Depending on the specific factors of the loan, building value, owner's desires, etc, there can be different ways to work things out.

Continued on last page

LETTERS TO THE EDITOR

In the July 2010 Housing Insights, you praise Bette Middler for helping to green New York City. I don't think she deserves this praise since she is the one who supported all the Green Garden people who illegally occupied land that was then converted into the "community gardens". She basically helped to take land from private owners, and that cannot and should not be praised. *Merryl Schneider*

SAVE THE DATE FOR OUR NEXT MEMBERSHIP MEETING: TUESDAY DECEMBER 7 WE'LL HAVE SOME GOOD STUFF ABOUT FIRE SUPPRESSION IN YOUR BUILDING AND LAUNDRY SOLUTIONS DOWN TO 2 & 3 FAMILY BUILDINGS + MUCH MORE. ENJOY THE HOLIDAYS AND WE HOPE TO SEE YOU IN DECEMBER. Look for our postcard in the mail.

BEDBUG DISCLOSURE LAW PASSED

The state passed S8130/A10356B which requires that owners reveal the bedbug history of the specific apartment as well as the entire building during the prior year when signing a vacancy lease. DHCR has promulgated form DBB-N which can be found on the internet at <http://nysdhcr.gov/Forms/Rent/dbbn.pdf>.

GIVE IT BACK? NOT YET

The low rent adjustment passed by the Rent Guidelines Board last year was found to be illegal in *Casado v Markus*. The court decision was appealed, but the Appellate Division, First Department recently unanimously affirmed the decision. It is unlikely that a second appeal will win, so we are advising all owners to offer renewal leases using only the applicable percentage increase. If owners have already collected the flat dollar increase in prior renewals, we are recommending that the money be placed in escrow until the matter has been fully resolved in the courts. If a renewal lease has been signed but the new rent has not yet started, offer the tenant a revised lease using only the percentage increase, but include a rider that would allow you to give an amended renewal should the courts reinstate the flat dollar increase.

LEGAL TIDBITS

- In a non-payment proceeding, be sure to name all occupants of the apartment
- A court settlement in which the tenant is not represented by an attorney can easily be voided by the court
- A roommate can sue the prime tenant for overcharging, but a sub-tenant can legally be charged the entire rent
- You don't have to serve a non-renewal notice on a sub-tenant, just the prime tenant
- If your apartment was vacant on the base date, you can charge a "first-rent" of whatever amount you determine, but you may not charge a "preferential" first-rent.
- If you are starting a nuisance eviction, you must use the same specific language on the Notice to Cure (the first papers to be served on the tenant) as in other court documents.

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Moreover, this bill, if signed into law, would preempt the New York City law and eliminate the carve-out for New York City property owners. I do not believe this broad compulsion to participate in the Section 8 program is necessary in regard to buildings with three, four and five apartments, and it has the potential to drive such housing from the market, and have the perverse result of creating a disincentive for people to invest in affordable housing in New York.

Further, this bill has the potential to substantially increase the caseload of the Division of Human Rights, requiring a substantial commitment of new resources and the hiring of additional staff.

Following the passage of the New York City ban on source of income discrimination, the New York City Commission on Human Rights, which is responsible for enforcing the law, saw complaints based on alleged discriminatory failure to accept Section 8 vouchers swell to 20% of its caseload. A similar upsurge in the caseload of DHR would mean hundreds of new complaints. The additional staff necessary to process these complaints could cost as much as \$2.7 million. The Legislature has identified no existing funds and provided no new revenue to pay for this bill, and this is an expenditure the State simply cannot afford at this time.

The bill is disapproved."

THE SECTION 8 SPECIALIST
Let us help you select your next Section 8 Tenant for FREE
 The money is good, but character counts.
Vince Castellano Licensed Real Estate Broker
 Former Owner Representative NYC Rent Guidelines Board
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vcastellano@verizon.net

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We informed you in previous newsletters that the four-year statute of limitations had been weakened. The four-year statute of limitations prevents DHCR and the courts from looking at rent records more than four years prior to the filing of an overcharge complaint. However, the courts have repeatedly tried to undermine the law by trying to find loopholes in three areas:

RENT REDUCTION ORDERS: Despite the law, the lower courts ruled that if a rent reduction order was issued prior to the four-year period, that order, regardless of how old it was, would determine the base date and the base date rent. In one case, the Appellate Division, Second Department (serving Brooklyn, Queens and Staten Island) reversed the lower court's ruling in part. It found that the four year period could be ignored in order to determine the legal rent as determined by a rent reduction order but overcharges were limited to a four year period. In two other cases, the Appellate Division, First Department (serving Manhattan and the Bronx) determined that the four year rule means exactly four years – whatever rent was paid by the tenant four years prior to the complaint determined both the base date and the legal rent, despite a previous rent reduction order. The conflicting decisions will ultimately be decided by the Court of Appeals.

The four-year rule is also under attack in two other areas:

FRAUD: In *Grimm v. DHCR*, an Appellate Division decision stated that the DHCR should go beyond the four-year limitation on overcharge cases if there is an allegation of fraud (an easy allegation for a tenant to make - as exemplified by this case - in which the alleged fraud consisted of the owner charging market rent after a rent controlled tenant vacated the apartment). CHIP has filed an amicus brief in the Court of Appeals).

APARTMENT STATUS: If the status of an apartment is brought into question, the DHCR and/or court can go beyond the four year statute of limitations to determine the status of the apartment.

NEW RULES FOR TENANT SCREENING

Local Law 2 of 2010, which went into effect June 30, 2010, requires owners to add text to their apartment application forms:

YOU SHOULD KNOW THE FOLLOWING ABOUT YOUR CREDIT REPORT

Information provided by you in this application may be used to obtain a tenant screening report.

*We use _____
located at _____
to do a credit check.*

If you are rejected because of a bad credit report, we will notify you of this.

(1) You have a right to inspect and receive one free copy of such report by contacting the consumer reporting agency used by the screening agency, and

(2) You have a right to obtain a free copy of the report from each national consumer reporting agency (Transunion, Equifax, and Experian) annually, (you must do this yourself) and

(3) You have a right to obtain a report from www.annualcreditreport.com, and

(4) You have a right to dispute any inaccurate information in the report.

The notice must be set off in a box that sharply contrasts with the print surrounding it and if the prospective tenant is giving you the information verbally, you must hand a written copy of this statement to the prospective tenant.

In addition, the following sign must be posted in a conspicuous place in your office or area where prospective tenants can easily view it:

NOTICE ABOUT TENANT SCREENING REPORTS

**We may use information you provide us in your application to obtain a tenant screening report.*

**We will contact the following consumer reporting agencies to obtain the report _____.*

**State and federal law require us to notify you if we do not lease or rent to you based on information in that report.*

**You are also entitled to receive one free credit report every 12 months from each of the nationwide consumer credit reporting companies: Equifax, Experian and TransUnion.*

**You can request this free credit report through the website www.annualcreditreport.com*

**You may dispute the accuracy of any information about you that is contained in such report directly with the credit reporting agency.*

The notice must be in 24 point type and contrast sharply with the background color of the sign.

Penalties for non-compliance are between \$250.00 to \$500.00 for the first violation and between \$500.00 to \$750.00 for each subsequent offense. Call the SPONY office if you want us to fax or E-mail you the forms.

LOCK IT UP

by Kerry Peterson

Many property owners who discover that I use a Medeco restricted key lock on the front of my building are surprised that I do this. Yet this is one of the best investments that an owner can make in their property.

For those of you who are not familiar with restricted key locks, they are produced by Medeco and Multilock, and others. They cost a bit more to install but they are worth every penny. In fact, every ten years or so, I proceed to replace the lock and key with a newer system. The restricted key means that only certain locksmiths have the equipment necessary to make a new key and that those who have the machine require that the plastic card supplied with the lock (similar to a credit card) be presented each time new keys are ordered. This means, clearly and simply, that your tenants cannot reproduce the key and hand it out to every friend of theirs.

As an owner, you and I are responsible for the safety of our tenants. However, in a situation where every tenant can copy the entrance door keys, you cannot ensure the safety of your tenants. Once that lock is installed, were anything untoward to happen, and you were sued, then your insurance company and your attorney would have a better defense.

Additionally, restricted keys make it more difficult for unscrupulous tenants to sublet or rent out (you know, those short terms NYC stays that the NYC Council is attempting to legislate against because they reduce the safety of the building) their apartments. As an owner I am required to give one key to the front door per named party on lease. I also agree that a tenant, upon payment of a

Con't on p4

Lock *con't from p3*

significant escrow fee (which is placed into the rent security account) can receive a second front door key.

Of course, the installation process is a bit time consuming, and has to be scheduled for a weekend day so that the key exchange can take place expeditiously. I advise the tenants in writing about 3 weeks in advance so that they can schedule their time appropriately, and then when I meet them I have a form prepared on which each tenant signs for the number of keys received and exchanged (yes, I do require that they return the old keys.... That lets you know if someone has managed to "evade" the system and get an illegal copy (hard to do).

Obviously, if you do this yourself, and the only person allowed to receive a new key is the tenant of record, well, the conclusion is pretty obvious.

There is presently new legislation before City Council that prohibits subletting for less than a month. The belief is that it will help ensure tenant safety. It is my opinion that this legislation supports my additional requirement – that tenants let me know who is accessing their apartment while they are on vacation.

...I won't try to "sell" you anything or play games, and I want you to discuss everything we discuss with your lawyer."

Since this sounded like a possible solution, I called him back. When he told me he wanted me to sell the building to him and offered me \$500,000 for a property easily worth \$750,000. I flatly refused. I had no plans to sell. He aggressively informed me that if I didn't sell, he intended to purchase the mortgage from the bank and would foreclose on the property if I didn't pay him immediately after his mortgage purchase.

I was being harassed and manipulated, so, in November 2009, I went to the Supreme Court and filed papers to obtain a "Temporary Restraining Order" to prevent the bank from selling the mortgage. In December 2009, I received a letter from the bank stating that the note was sold to Eli Davidovics of Minotaur Management, and I was to pay him \$345,000 immediately. I didn't have \$345,000 (not even \$40,000) so this was an impossibility.

When I appeared in court in January 2010, I informed the judge that the bank had ignored the restraining order and had sold the mortgage. Jacqueline Suarato of Capital One, stated for the court records that Eli Davidovics was a client of the bank and that they had, in fact, sold the mortgage to him.

Eli Davidovics was not specifically named in the proceeding but was present in court. When he saw me leaving the courtroom to go to the ladies' room, he ran after me. He sarcastically announced that he now wanted \$590,000 for the mortgage and I

SHARK *Continued from page 1*

should have sold the building to him earlier for a lot less. The outrageous bullying brought me to tears, but the judge did grant an adjournment so that I could retain an attorney.

Shortly after the court date, ironically, two men who clearly didn't belong in the neighborhood (type of dress and appearance) were seen going into the building after 11:00 pm one night. A short while later, there was a fire in the third floor hallway. Lucky for me, fire extinguishers on every floor and sprinklers saved the day and only a small burn spot remained to show that the event took place.

One tenant moved right afterwards, and the next day I bought a \$600 steel entrance door, new locks, and a security system with tapes. Thankfully, I kept paying the insurance premium, because if the damage was worse that would have ruined everything... and what if (there are children in the apartments) people died!?

Are Mafia tactics being used by the banks and/or their "clients?" The following week, another man appeared and knocked on every tenant's door, claiming he was from HPD and asking to inspect the apartments. He had no identification and I had to warn all the tenants that a scam was going on and not to open their doors for anyone.

As far as I'm concerned, Mr. Davidovics is just trying to steal the building from me with bank compliance. I will keep you informed of coming events, since the case is still before the court.

Editor's note: We will print the conclusion to this story as soon as it unfolds. Look for it in one of our future newsletters.

HOUSING INSIGHTS
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