

# Rent Regulation: More Insane Than Ever!

The topic of New York's rent regulation system and the crack down on property owners for "harassing" tenants seems to be in the papers every week. Elected officials score points, which they think will win them future votes, by bashing property owners at every turn, and it is beginning to become more common to read about property owners going to jail for their misdeeds.

It has reached this level of distrust and anger because tenant advocacy groups are becoming more active and elected officials find property owners an easy target. (I always use the term "owner" as opposed to "landlord.")

Owners are an easy target for several reasons. First, they are viewed as representatives of the so-called 1 percent that so many in New York City despise. Second, there are many more rent regulated tenants than property owners and most elected officials can do the math well enough to figure out which is the bigger voting block. And, finally, why should the city spend money on rent subsidies when they can force the private sector to supply the public benefit?

The third point should be explored further. Politicians routinely refer to rent regulation as being correlated to affordable housing. Unfortunately, the two are mutually exclusive. Affordability is a relative measurement—and there is no measurement, of any kind, within the broader system of regulation. A tenant could be making \$30,000 per year or \$3 million per year, and as long as they were lucky enough to move into their apartment at the

right time, they are eligible to receive rent welfare (a strange term, I know, but this doesn't seem particularly different than other forms of public assistance). This is tantamount to having high school students standing in front of Grand Central Terminal with boxes of food stamps and handing them out to everyone wearing something blue. What sense does this make? Rent regulation is an inertia system, not an affordable housing system.

The current system leads to a misallocation of housing resources. Large families stay squeezed into a two-bedroom apartment and a widowed senior citizen remains living alone in a four-bedroom. This misallocation constrains supply and drives up rents up for unlucky free-market tenants. A new potential tenant coming into New York City thinks it has 3.3 million dwelling units to potentially choose from. With

1 million regulated units, the field is, essentially, reduced by about one-third.

Harassment is the angle du jour for politicians looking for votes. Recently, the City Council has proposed legislation that would greatly expand the definition of criminal harassment in an attempt to make it easier to succeed against owners. And it is even endorsing the un-American, and probably unconstitutional, concept of "rebuttable presumption," which would make housing court the only court in the United States where you are not innocent until proven guilty.

There is also a movement to stop owners from filing frivolous lawsuits. Unfortunately,

tenants don't show up at the management office and proclaim, "My rent-regulated apartment is not my primary residence. Here are my keys." Nor do they show up to say they are illegally subletting their unit (through Airbnb or otherwise) or that they earn an annual salary over the threshold for high-income deregulation. What options are left to property owners but to litigate to simply get to the truth? Since 2014, the city has spent \$153 million defending tenants in housing court and \$0 defending property owners from deadbeat tenants who can use taxpayer money to drag out the eviction process for years without paying a dime in rent or legal fees.

Sure, there are plenty of property owners who don't do the right thing, but the overwhelming majority of owners play by the rules as is borne out by the numbers. Out of the approximately 1 million regulated units, there were just 977 harassment cases filed last year. That means about one case for every 1,023 units, and tenants prevailed in just 15 of those, or one out of every 67,000 units.

However, I offer a suggestion to cut down this already minuscule level of harassment even further. Employ means testing for regulated tenants to have them qualify for their rent subsidy. Tenants who get into new affordable buildings must qualify and tenants seeking units in the 20 percent portion of 80/20 buildings must prove they qualify for those units. Why not all regulated tenants? Most owners don't want to evict tenants who truly need the subsidies, but those gaming the system should move on. This process would likely free up 100,000, or so, apartments.

Another suggestion is to make nonregulated residents of New York City aware of the additional burdens they bear for those who receive the rent subsidies. Real estate taxes on buildings with mostly nonregulated units are much higher per square foot than regulated properties. If free-market tenants received rent bills showing they have to pay \$3,000 per month but their "rent" is \$2,100 and their real estate tax contribution is \$900, they might start to become aware of the burdens they absorb for regulated tenants. There are certainly many more nonregulated voters in New York City than regulated voters. Enough groundswell from nonregulated voters could provide a politician with the intestinal fortitude necessary to endorse a rational system.

The courts have become so pro-tenant that the battle for owners has become more difficult than ever. In a recent conversation with one of my clients, he told me he initiated litigation against one of his rent-regulated tenants as he believes the apartment is not the tenant's primary residence. To back up his claim, he installed cameras in the hallways of his building. For almost 18 months, the cameras show a different tenant coming and going each day and never a sign that the tenant on the lease ever showed up. As my client tells it, the judge is looking for any way possible to disallow the video footage. In an environment like this, what options are left for owners?

Rent regulation will likely never go away in New York, but rational changes to the system would make it better. The way things are heading today, those changes appear to be nothing but fantasy.



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