NEW YORK Landlord v. Tenant®

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JANUARY 2015 HIGHLIGHTS

Don't Reject Rent Payment from 'Lawful Source'

A court ruled that landlord couldn't evict tenant for nonpayment of rent. New York City policy prevents discrimination against tenants based on any lawful source of income. The funds needed for tenant to pay the back rent were available from a lawful source, and landlord refused to complete the form needed to release the funds. (See case #25906, p. 4.)

Get MCI Rent Hike for Installing Handicap Entrance

The DHCR ruled that landlord could get MCI rent hikes for installing a fourth building entry, even though it was installed for the benefit of a single tenant in order to comply with the Americans with Disabilities Act. (See case #25931, p. 8.)

Get MCI Rent Hike for Electronic Keycard System

The DHCR ruled that landlord could get MCI rent hikes for installing a new lobby door with an electronic keycard system. Landlord had already gotten the DHCR's permission to change from a key lock to a keycard system, so the change wasn't a reduction in services. (See case #25947, p. 9.)

Get Complete Rent Records from Prior Landlord

The DHCR ruled that landlord must refund tenant $15,000 in rent overcharges, including triple damages. Landlord submitted rent history records going back only two years because it didn't obtain any prior records from the prior landlord. (See case #25940, p. 17.)

Don't Raise Rent for Second Vacancy in Same Year

The DHCR ruled that landlord must refund tenant $13,000, including triple damages, because landlord had improperly collected a vacancy increase from tenant in July 2011, after collecting a prior vacancy increase for the apartment in March 2011. The Rent Stabilization Code was amended in 2011 to disallow more than one vacancy increase during a given calendar year. (See case #25938, p. 18.)

Keep Security Deposit When Tenant Moves Out Early

A court ruled that landlord didn't have to return former tenant's security deposit. Tenant had moved out five months before his lease expired, and landlord was entitled to apply the security deposit to unpaid rent accruing after tenant left. Any oral agreement to the contrary was nonbinding. (See case #25911, p. 22.)

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LANDLORD V. TENANT

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SUBMISSIONS: To submit a case for consideration in our next issue, please email it to the executive editor at *hogilvie@vendomegrp.com*, or send it by regular mail to: Heather Ogilvie, Vendome Group LLC, 216 East 45th St., 6th Fl., New York, NY 10017. Please include your name and the name of your firm, indicate whether you represented the landlord or the tenant, and attach a copy of the decision.

Volume 29, Issue 11

TABLE OF CONTENTS

TO THE READER

Each issue of **NEW YORK LANDLORD V. TENANT** covers recent landlord-tenant rulings. In this issue, you will find the following court cases and agency decisions through December 2014.

Landlord-tenant court cases reported in the *New York Law Journal* and *New York Supplement 2d.*

Unreported landlord-tenant cases obtained by the editors.

Important opinions selected by the editors from the Division of Housing and Community Renewal and the NYC Environmental Control Board.

Each case is identified by a paragraph number, and cases are numbered throughout the issue. To download DHCR cases in this issue, please visit *www.LandlordvTenant.com.*

KEY: NEW YORK LANDLORD V. TENANT uses the following abbreviations for various New York courts, agencies, legal publications, and technical terms:

ALJ	Administrative Law Judge
App. Div.	Appellate Division, Supreme Court (appeals)
App. T.	Appellate Term, Supreme Court (appeals)
Civ. Ct.	NYC Civil Court (trials)
Ct. App.	NYS Court of Appeals (highest court in state)
DEP	NYC Dept. of Environmental Protection
DHCR	NYS Division of Housing and Community Renewal
DOB	NYC Dept. of Buildings
DOF	NYC Dept. of Finance
DOHMH	NYC Dept. of Health & Mental Hygiene
DOS	NYC Dept. of Sanitation
DRA	DHCR District Rent Administrator
DSS	NYC Dept. of Social Services
DTF	NYS Dept. of Taxation & Finance
ECB	NYC Environmental Control Board
ETPA	Emergency Tenant Protection Act
HPD	NYC Dept. of Housing Preservation & Development
MBR	Maximum Base Rent
MCI	Major Capital Improvement
MCR	Maximum Collectible Rent
NYCHA	NYC Housing Authority
NYLJ	New York Law Journal
NYS2d	New York Supplement, 2nd Series, legal reporter
PAR	Petition for Administrative Review
SRO	Single Room Occupancy
Sup. Ct.	NYS Supreme Court (trials)

TABLE OF CONTENTS *(continued)*

DEP VIOLATIONS

Landlord Fined for Not Installing Backflow Prevention Device #25913

DEP issued a violation notice to landlord for failing to install a backflow prevention device (BPD) at its building. At a hearing, landlord produced an initial test report showing that the BPD was installed on Sept. 12, 2014. The ALJ fined landlord $700 since the device was installed after the violation date. Landlord appealed and lost, now claiming that the violation notice was delivered improperly. Landlord can't raise this claim for the first time on appeal and, in any event, the notice was properly served on the NYS Secretary of State.

- Gui & Man 33-23 Inc.: ECB App. No. 1401090 (12/18/14) [1-pg. doc.]

DISCRIMINATION

Landlord Thwarted Tenant's Rent Payment from Lawful Source #25906

Landlord sued to evict tenant for nonpayment of rent. Landlord and tenant signed a settlement agreement in court, giving landlord a judgment of possession and money judgment of $4,900. Tenant could avoid eviction by paying the back rent owed. Tenant made one partial payment when she signed the agreement. Tenant later asked the court to vacate the eviction warrant. Catholic Charities had agreed to pay the balance due for tenant but required landlord to complete a W-9 tax form to do so. Landlord claimed that it wasn't required to complete the form and opposed tenant's request. The court ruled for tenant, finding that landlord had breached the implied covenant of good faith and fair dealing and had frustrated tenant's efforts to comply with the settlement agreement.

Landlord appealed and lost. Tenant showed good cause to vacate the warrant, although the appeals court based this decision on a different reason. New York City policy prevents unlawful discrimination against tenants based on any lawful source of income. The funds needed for tenant to pay the back rent were available from a lawful source of income, and landlord refused without explanation to complete the form needed to release the funds.

- Dino Realty Corp. v. Khan: 2014 NY Slip Op 24401, 2014 WL 7263904 (App. T. 2 Dept.; 12/11/14; Aliotta, JP, Pesce, Solomon, JJ)

DOB VIOLATIONS

Gas Piping Didn't Run Through Trash Chute #25914

DOB issued a violation notice to landlord for failing to maintain a building in a safe and code-compliant manner. DOB's inspector found that gas piping and other equipment was installed improperly in the boiler room where a garbage compactor was also located. Landlord claimed that the boiler was being converted from oil-burning to gas-burning and that the installation was now complete. DOB argued that this only made the condition worse because Fuel and Gas Code Section 404.1 prohibited the installation of gas piping near a trash chute. The ALJ ruled against landlord and

fined it $500. Landlord appealed and won. Placing gas piping in proximity to a trash chute or compactor doesn't violate FGC Section 404.1. The code prohibits only the installation of gas piping "in or through" a trash chute. Although the condition may violate another section of the Building Code, it didn't violate the FGC section cited. The fine was revoked.

- 2194 Barnes Ave. LLC: ECB App. No. 1400976 (12/18/14) [3-pg. doc.]

Landlord Rented Locked Room for Transient Occupancy #25912

DOB issued a violation notice to landlord for converting a one-family dwelling into a "bed and breakfast" for transient use. DOB's inspector observed three bedrooms with locked doors on the second floor of the house with a shared three-piece bathroom. At the time of inspection, the inspector interviewed an Australian occupant who stated that he was staying at the building for one week. The building also was advertised online as a "B&B." Landlord argued that he shared the building with up to two boarders and that this didn't violate the Multiple Dwelling Law (MDL) or the Housing Maintenance Code (HMC).

The ALJ ruled against landlord, found that the building was transiently occupied in violation of Code Section 28-118.3.2, and fined landlord $2,400. Landlord appealed and lost. While landlord may have been living in the building, he wasn't sharing his household with the tourist occupant seen by DOB. The tourist was living in a separate apartment from landlord, having rented a locked bedroom with its own private bathroom. Since the tourist wasn't sharing the household with a permanent occupant, landlord was in violation of the law.

- Seidel: ECB App. No. 1401066 (12/18/14) [5-pg. doc.]

DOH VIOLATIONS

Landlord Fined for Openings that Allowed Rats to Enter Building #25915

The DOHMH issued a violation notice to landlord for failing to keep a building free of pests and conditions conducive to pests. The inspector observed inadequate stoppage based on gaps found at cellar windows and in sewer piping. This gave rodents unobstructed entry into the building. Landlord claimed improper delivery of the violation notice. The ALJ ruled against landlord and fined it $300. Landlord appealed and lost. Landlord argued that DOHMH sent two duplicate notices for the same condition. But the second notice cited not only the entry point access but rat burrows found outside the building. So the notices weren't duplicates.

- Bedford Bergen LLC: ECB App. No. 1401184 (12/18/14) [3-pg. doc.]

EVICTION

Tenant Can't Vacate Settlement Agreement #25905

Landlord sued to evict rent-stabilized tenant for nonpayment of three months' rent. Landlord learned that tenant had died only when her son appeared in court and

claimed that he had succession rights to the apartment. The son had forged tenant's signature on tenant's last renewal lease. The son previously had been a tenant himself in the next-door apartment, but landlord had evicted him for operating a commercial contracting business in that apartment in violation of his lease. At that point, landlord also discovered that tenant's son had illegally combined the two apartments by cutting through a wall between them. Landlord sealed the wall when it evicted the son from the next-door apartment. But the son lived in tenant's apartment and broke through the wall again. He also then stole items from his former apartment.

Landlord and tenant's son settled the nonpayment case. The son agreed to move out in four months. The son also agreed to pay the rent owed and restitution for property damage. Landlord in turn agreed not to press criminal charges against tenant's son. Tenant later asked the court to vacate the settlement agreement.

The court ruled against tenant's son. Tenant's son was represented by a prior attorney at the time the settlement was reached. Tenant's son claimed that the attorney had signed the agreement without his knowledge. But the attorney was authorized to represent the son. And the son had made payments agreed to in the settlement. The settlement agreement also generously permitted tenant's son to remain in the apartment for four months and avoid criminal prosecution. There were no grounds to vacate the settlement agreement.

- 1541 Williamsbridge Realty, LLC v. Ramsay: 45 Misc.3d 1224(A), 2014 NY Slip Op 51707(U) (Civ. Ct. Bronx; 12/3/14; Vargas, J)

Eviction Blocked Pending Ruling on Whether Foreclosure Was Valid #25932

A co-op apartment shareholder tenant defaulted on a $180,000 mortgage loan she obtained to purchase a Brooklyn apartment. The lender foreclosed on the apartment in 2011, then assigned the property to the Federal National Mortgage Association (FNMA). FNMA then sued to evict tenant in housing court. Tenant, in turn, sued to stop the FNMA from evicting. The court ruled for tenant, finding that the original lender failed to give tenant 90 days' prior written notice of its intent to foreclose. This was required by the Uniform Commercial Code. So, FNMA was barred from going forward with the eviction proceeding until the court ruled on whether the foreclosure sale must be set aside as invalid.

- Newman v. Federal National Mortgage Assn.: 2014 NY Slip Op 51844(U), 2014 WL 7334192 (Sup. Ct. Kings; 12/23/14; Silber, J)

FIRE DEPARTMENT VIOLATIONS

Landlord's Sprinkler System Flow Test Was Untimely #25916

The Fire Department issued a second violation notice to landlord for failing to conduct a five-year performance flow test of the building's residential sprinkler system in front of a Fire Department representative. Landlord claimed that he had scheduled the flow test but was sick on the test date. He rescheduled the test, which was conducted four months later. The ALJ ruled against landlord and fined it $1,500 after finding that landlord didn't perform the test before the first scheduled hearing date.

Landlord appealed and lost. The fact that landlord may have had the flu on the initial test date was no defense. And, to have penalties reduced, landlord had to show proof of correction of the violation before the first scheduled hearing date. Landlord failed to do this.

- USA Triple A, LLC: ECB App. No. 1401014 (12/18/14) [3-pg. doc.]

LANDLORD'S NEGLIGENCE

Landlord Not Responsible for Dog Bite #25952

Tenant's acquaintance sued tenant and landlord after tenant's dog bit the acquaintance on the hand. The court granted landlord's request to dismiss the case as against landlord. The dog was in tenant's car near the driveway of the acquaintance at the time that the acquaintance was speaking with tenant. This was several miles away from tenant's apartment. It didn't matter, as landlord claimed, that tenant no longer lived in the apartment. Under these circumstances, landlord had no duty to the acquaintance to prevent the dog bite.

- Ferrara v. Ball: Index No. 601017/13, NYLJ No. 1202713355710 (Sup. Ct. Nassau; 12/26/14; Marber, J)

Landlord Not Responsible for Attack on Tenant in Building #25902

Tenant sued landlord for damages after she was attacked in her apartment building, claiming that landlord provided inadequate building security. Landlord claimed that it wasn't responsible and asked the court to dismiss the case without a trial. The court ruled against landlord, who appealed and won. Landlord could be responsible for the attack only if the attacker was an intruder. But there was no proof that the attackers were intruders rather than tenants or people who had been invited into the building. The case was dismissed.

- Hierro v. NYCHA: 2014 NY Slip Op 08734, 2014 WL 6978343 (App. Div. 1 Dept; 12/11/14; Mazzarelli, JP, Sweeny, Moskowitz, Richter, Feinman, JJ)

LEASES

HPD Approval Needed for Lease in City-Owned Building #25935

Tenants' association sued to void a lease entered with tenant for an apartment in a building owned by the City of New York. The court ruled for the tenants' association. Tenant appealed and lost. Because the building was owned by the city, prior written approval by HPD was needed for tenants' association to enter into a lease with tenant. The lease therefore was invalid and unenforceable.

- 408 East 10th Street Tenants' Assn. v. Nespral: 2014 NY Slip Op 08726, 2014 WL 6978483 (App. Div. 1 Dept.; 12/11/14; Gonzalez, PJ, Tom, Friedman, Acosta, Moskowitz, JJ)

MAJOR CAPITAL IMPROVEMENTS

Tenants Didn't Raise Hazardous Violation Issue Before the DRA #25950

The DRA granted landlord's MCI rent increase application based on adequate wiring. Tenant appealed and lost. Tenant claimed that there were 10 open class "C" immediately hazardous violations on record with HPD. But only one tenant responded to the DRA's notice of landlord's MCI application, and that tenant didn't raise any issue concerning class "C" violations. So the DHCR couldn't consider this issue for the first time on appeal. In addition, tenant didn't submit a violation printout with his PAR.

- 37-51 to 37-55 79th St.: DHCR Adm. Rev. Docket No. YI110068RT (11/14/14) [2-pg. doc.]

MCI Rent Hike Denied Due to Class 'C' Lead Paint Violations #25948

Landlord applied for MCI rent hikes based on the installation of a new roof. The DRA ruled against landlord due to hazardous, Class C, lead paint violations placed on the building by HPD. Landlord appealed, claiming that the DRA should have given landlord a final opportunity to show that the violations had been cleared from HPD's records. The DHCR ruled against landlord. The DRA gave landlord a number of opportunities to submit evidence that the violations had been cleared. The DRA gave landlord two 60-day extensions of time to submit proof, through Aug. 11, 2010. When landlord hadn't submitted any proof by Oct. 21, 2010, the DRA properly denied landlord's MCI application.

- 1087 Carroll St.: DHCR Adm. Rev. Docket No. YK210042RO (11/28/14) [1-pg. doc.]

Handicap Entrance Qualifies as MCI #25931

Landlord applied for MCI rent hikes based on installation of various improvements, including a fourth building entry. The DRA ruled for landlord. Tenants appealed and lost. Tenants argued that the new entrance was installed for the benefit of a single tenant in order to comply with the Americans with Disabilities Act (ADA). But access work at building entrances for people with special needs is still a building-wide improvement that qualifies as an MCI.

- Various Tenants/Harbor One Co., LLC: DHCR Adm. Rev. Docket Nos. AT910026RT/AU910009RO (11/7/14) [7-pg. doc.]

Defective Repiping in Some Apartments Didn't Bar MCI Rent Hike #25927

Landlord applied for MCI rent hikes based on water and gas repiping. The DRA ruled for landlord but exempted 13 apartments from the rent increase due to defects in the repiping to those apartments. Tenant appealed and lost. Tenant claimed that the exemption of the 13 apartments showed that the entire repiping job was defective. But the fact that a limited number of tenants had problems with the installation didn't otherwise bar the rent increase. The defective repiping showed up in only 14 percent of the 92 apartments.

- 245 East 21st St.: DHCR Adm. Rev. Docket No. TC430095RT (11/26/14) [2-pg. doc.]

Engineer Fees Disallowed for Work Done by Elevator Contractor #25951

Landlord applied for MCI rent hikes. The DRA approved increases for elevator upgrading and elevator motor room electric service, but denied any increase for elevator plans and specifications prepared by an architect or engineer. Landlord appealed and lost. Tenants shouldn't be required to bear supervisory and administrative expenses in this case since landlord used a licensed professional contracting elevator company that warranted all work and materials to be free from any and all defects under the terms of its contract with owner.

- 101-06 67th Dr.: DHCR Adm. Rev. Docket Nos. YF110009RO , YE110045RT (11/6/14) [2-pg. doc.]

Final Payment Made More Than Two Years After Work Completed #25949

Landlord applied for MCI rent hikes based on elevator upgrading. The DRA ruled against landlord because the application was filed more than two years after DOB signed off on the work. Landlord appealed and lost. Landlord argued that the application was filed within two years after final payment was made for the elevator. But here, the work was completed before landlord made final payment to its contractor. So the final payment date didn't determine the two-year time limit for filing the MCI application.

- 301 West 45th St.: DHCR Adm. Rev. Docket No. YH410043RO (11/28/14) [2-pg. doc.]

MCI Rent Hike Granted for Electronic Keycard System #25947

Landlord applied for MCI rent hikes based on the installation of a new lobby entrance door. The DRA ruled for landlord. Tenants appealed and lost. Tenants argued that the new lobby door didn't lock and that the change from a key lock to an electronic keycard system was a reduction in services that didn't qualify as an MCI. But the DHCR had already granted landlord permission in a prior decision to change the front door entrance to a keycard system. So tenants couldn't oppose the MCI increase on that basis. And inspection showed that the door was in working order.

- 39-89 50th St.: DHCR Adm. Rev. Docket No. YC110051RT (11/25/14) [3-pg. doc.]

PASSING ON APARTMENTS

Landlord Can Conduct Pretrial Questioning #25934

Landlord sued to evict rent-stabilized tenant based on nonprimary residence. Tenant admitted he moved out of the apartment in October 2011. But tenant's brother claimed that he lived in the apartment as his primary residence and had succession rights. Landlord asked the court for permission to conduct pretrial questioning. Tenant claimed that his brother suffered from a mental disability that would make it difficult to question him. A psychiatrist supported tenant's claim. The court ruled for tenant

in part. Landlord could serve written questions on the brother, could conduct pretrial questioning of tenant, and could demand production of documents for the two-year period immediately before tenant moved out in October 2011.

- 551 Hudson Street Property LLC v. Rios: Index No. L&T 91743/13, NYLJ No. 1202713072149 (Civ. Ct. NY; 12/5/14; Gonzalez, J)

Common Law Wife Didn't Prove Succession Rights #25917

An apartment occupant claimed succession rights to rent-stabilized tenant's apartment. The DRA ruled against occupant, who appealed and lost. Occupant claimed that she had lived with tenant as his common law wife for 39 years and had two children with him. She also argued that, as a senior citizen, she only had to prove that she had lived with tenant for a year before he moved out. But, in spite of the DRA's request for additional information, occupant never provided the exact date that tenant moved out, didn't submit sufficient proof of rental payments prior to the time tenant moved out, and didn't provide any proof of emotional and financial interdependence between herself and tenant.

- Rodriguez: DHCR Adm. Rev. Docket No. CO410010RT (11/25/14) [4-pg. doc.]

PRIMARY RESIDENCE

Landlord Shows Tenant Virtually Abandoned Apartment #25900

Landlord sued to evict rent-stabilized tenant for nonprimary residence. The trial court ruled for landlord. Tenant appealed and lost. Among other things, landlord presented compelling photographs that showed that tenant kept the apartment in a state of disarray, with a refrigerator, bathtub, and sink in a state of disuse and debris throughout. There also was no bed in the apartment, and electrical use during the two-year period before tenant's last renewal lease expired was virtually nil.

- West 88th Street LLC v. Henriquez: 45 Misc.3d 133(A), 2014 NY Slip Op 51685(U) (App. T. 1 Dept.; 12/1/14; Lowe, PJ, Shulman, Hunter Jr., JJ)

PROCEDURE—COURT

Landlord Can Restore Case After 16 Months #25936

Landlord sued to evict tenant for making unauthorized apartment alterations. Both sides were represented by attorneys and agreed to mark the case off the court's calendar while conducting pretrial questioning and document production. Sixteen months later, landlord asked the court to restore the case to the calendar. Tenant claimed that landlord waited too long to pursue the case. The court ruled for landlord. Tenant appealed and lost. Landlord had a potentially meritorious claim, there was no prejudice to tenant by the delay, the parties had agreed to mark the case off calendar in an open-ended fashion, and the delay was through no fault of landlord's.

- Sammy Group LLC v. Evans: 45 Misc.3d 135(A), 2014 NY Slip Op 51753(U) (App. T. 1 Dept.; 12/15/14; Lowe III, PJ, Shulman, Hunter Jr., JJ)

PROCEDURE—DHCR

Tenant Can't Appeal DHCR Decision After Settling Case in Court #25919

Rent-stabilized tenant complained of rent overcharge. The DRA ruled against tenant, who appealed and lost. Tenant claimed that landlord charged two vacancy increases during the same lease period and that landlord didn't perform individual apartment improvements that it had claimed rent increases for. But, in a housing court proceeding, tenant had signed a settlement agreement agreeing to withdraw her PAR. So the DHCR must dismiss the case.

- Price: DHCR Adm. Rev. Docket No. AR-110035-RT (11/21/14) [2-pg. doc.]

RENEWAL LEASES

Did Preferential Rent Agreement Extend for Entire Tenancy? #25899

Landlord sued to evict rent-stabilized tenant for nonpayment of rent. Tenant claimed that he didn't owe the amount claimed due because he had a preferential rent that continued past his prior lease term. Tenant asked the court to dismiss the case without a trial.

The court ruled against tenant, who appealed and lost. The intended duration of tenant's preferential rent rider was unclear without conducting a trial. So tenant's demand that the court decide that question based on documents alone was premature. The rider didn't unequivocally and explicitly provide for a rent concession for the duration of the tenancy, and it could be interpreted in different ways. For example, it was unclear whether the term "renewal rent" used in the rider was the amount to be paid by tenant upon renewal of the lease or instead the amount intended to be used by landlord in calculating future rents in vacancy leases. Handwritten notations appearing on the renewal lease forms also raised questions that required further investigation.

- Ludlow Owner LLC v. Washburn: 45 Misc.3d 133(A), 2014 NY Slip Op 51677(U) (App. T. 1 Dept.; 12/1/14; Lowe III, PJ, Shulman, Hunter Jr., JJ)

Renewing Rent-Stabilized Lease Didn't Waive Chronic Nonpayment Claim #25897

(Decision submitted by Paul Gruber of the Manhattan law firm of Borah Goldstein Altschuler Nahins & Goidel, P.C., which represented the landlord.)

Landlord sued to evict rent-stabilized tenant due to chronic nonpayment of rent. Tenant asked the court to dismiss the case because, after serving a lease termination notice based on the chronic nonpayment, landlord renewed tenant's lease. The court ruled against tenant, who appealed and lost. Under the Rent Stabilization Law and Code, landlord was required to renew tenant's rent-stabilized lease in order to preserve the status quo pending determination of the chronic nonpayment issue raised in the holdover eviction proceeding.

- FM United LLC v. Wollin: 46 Misc.3d 126(A), 2014 NY Slip Op 51767(U) (App. T. 1 Dept.; 12/17/14; Schoenfeld, JP, Shulman, Ling-Cohan, JJ)

DHCR Permits Deemed Lease Renewal in Light of Implied Agreement #25929

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $5,684, including interest and triple damages.

Landlord appealed and won, in part. Landlord argued that the DRA failed to consider deemed leases in calculating the legal rent. Under amended Rent Stabilization Code Section 2523.5(c)(2), the DHCR no longer broadly approved deemed lease renewals in light of the conflict with Real Property Law Section 232-c. But, if there is an express or implied agreement between landlord and tenant, there can be a deemed lease under the law. Here, an implied agreement did exist in connection with tenant's first renewal lease in 2009. Tenant remained in occupancy and consistently paid the rent increase charged despite the lack of a signed renewal lease. But there was no similar implied agreement for later renewal periods. Tenant continued to pay the rent charged under the initial deemed renewal, and was a month-to-month tenant. The total overcharge, with triple damages, was reduced to $417.

- 3103 Realty LLC: DHCR Adm. Rev. Docket No. CO210006RO (11/25/14) [6-pg. doc.]

RENT

Trial Needed on Landlord's Chronic Nonpayment Claim #25933

Landlord sued to evict rent-stabilized tenant for chronic nonpayment of rent. Landlord claimed that it had to commence eight nonpayment proceedings against tenant in housing court between 2006 and 2013. Tenant asked the court to dismiss the case. She claimed that some of the proceedings landlord relied on were too long ago, and that the others either were settled in court by stipulations or involved warranty of habitability issues. The court ruled against tenant. Two of the proceedings were more than six years old and therefore couldn't be considered. Some of the cases didn't involve any claim of needed repairs. In one case that was settled it took tenant six months to pay the back rent owed. It appeared that most of the cases landlord brought were prompted by tenant's lack of funds. A trial was needed to determine the facts.

- 1975 Realty Associates, LLC v. Castellanos: Index No. L&T 065437/2013, NYLJ 1202677620726 (Civ. Ct. Bronx; 10/27/14; Vargas, J)

Did Landlord Wait Too Long to Seek Eviction? #25904

Landlord sued to evict rent-stabilized tenant for nonpayment of rent totaling $52,000. Landlord had refused to accept rent directly from tenant's daughter, who claimed succession rights. Tenant asked the court to dismiss the case, claiming breach of the warranty of habitability. He also claimed that landlord had waited too long to start the case. The court denied requests from both sides to decide the issues without a trial. Landlord and tenant both appealed. The appeals court dismissed tenant's warranty of habitability claim because tenant hadn't previously notified landlord of any

apartment conditions. But tenant's laches claim couldn't be decided without a trial on whether landlord's delay in starting the nonpayment case was reasonable under the circumstances.

- 72A Realty Associates, LP v. Mercado: 2014 NY Slip Op 24397, 2014 WL 7177481 (App. T. 1 Dept.; 12/17/14; Lowe III, PJ, Shulman, Hunter Jr., JJ)

Landlord Can Evict Tenant for Chronic Nonpayment of Rent #25898

(Decision submitted by Todd I. Nahins of the Manhattan law firm of Borah Goldstein Altschuler Nahins & Goidel, P.C., attorneys for the landlord.)

Landlord sued to evict rent-stabilized tenant based on chronic nonpayment of rent. Landlord claimed that tenant violated a substantial obligation of his tenancy by consistently, chronically, and unjustifiably exhibiting a pattern of untimely rent payments. Tenant argued that he had lived in the apartment for 35 years and always paid his rent late, including fees and penalties. Tenant claimed that this created a "novation" of the lease, in effect changing the lease requirements to permit late payment. Tenant also claimed waiver, that landlord was harassing him, and that there was a breach of the warranty of habitability.

The court ruled for landlord without a trial. Tenant didn't dispute that he had been served with 15 nonpayment petitions during a six-year period. Tenant also admitted that he ignored prior legal notices. There was no proof that landlord intended to revoke or cancel tenant's payment obligations. Tenant's lease contained a non-waiver clause, and there was no proof of harassment. There also was no proof that tenant complained about any conditions in the apartment before landlord started this eviction proceeding. Since there was a history of repeated nonpayment proceedings based on chronically late payment and no questions of fact, landlord could evict tenant and receive an award of attorney's fees.

- FM United LLC v. Wollin: Index No. L&T78382/13 (Civ. Ct. NY; 12/22/14; Spears, J)

RENT CONTROL COVERAGE

Husband's Income Not Considered in Luxury Deregulation Proceeding #25921

Landlord applied for high-rent/high-income deregulation of tenant's rent-controlled apartment in 2006. The DRA ruled against landlord, finding that tenant's household income didn't exceed $175,000 in either 2004 or 2005. Landlord claimed that the income of tenant's husband should have been included in the verification and calculation of household income. But the husband wasn't an apartment occupant at the time that landlord sent tenant the income certification form in 2006. By then, the husband had permanently vacated the apartment due to severe and debilitating medical and health problems. The husband had moved to an assisted living facility in March 2005 and had lived there full time until he died in November 2006. The husband's doctor also had stated that the move was permanent and based on the husband's dementia. So the husband's income was properly excluded from consideration as part of the household income.

- Brookford LLC: DHCR Adm. Rev. Docket No. AM420004RP (11/19/14) [9-pg. doc.]

RENT INCREASE ORDERED

Landlord Qualified for MBR Increase #25956

The DRA granted landlord's application for 2014-2015 Maximum Base Rent (MBR) increases based on its finding that landlord had correctly certified violation clearance requirements. Tenant challenged the DRA's ruling, finding that there were too many violations on record to qualify for MBR increases. The DRA ruled against tenant, who appealed and lost. Landlord was required to clear all rent-impairing violations and at least 80 percent of all other violations that were recorded on Jan. 1, 2013. Landlord showed that the building super had installed a proper lock and smoke detector in tenant's apartment. So there were no violations that could have disqualified landlord from MBR increases. Landlord had corrected the one rent-impairing violation and all six non-rent-impairing violations previously on record for the building.

- Johnson: DHCR Adm. Rev. Docket No. CV420010RT (11/4/14) [3-pg. doc.]

RENT OVERCHARGE

Landlord Proves Base Date Rent with Rent Ledgers #25941

Rent-stabilized tenant complained of rent overcharge. The DRA ruled against tenant, finding no overcharge. Tenant appealed and lost. The DRA found that tenant's base date rent was $935. Tenant claimed that it was $872. Neither landlord nor tenant submitted a lease showing the base date rent. But landlord submitted rent ledgers listing the rent as $935. Tenant's documentation of what she paid on the base rent date was inconsistent and unreliable. The rent checks tenant submitted for that period were for inconsistent amounts and were intended to cover more than one months' rent.

- Mack: DHCR Adm. Rev. Docket No. BX210005RT (11/19/14) [4-pg. doc.]

Vacancy Increase Charged to First Successor Tenant Was Improper #25924

Tenant complained of rent overcharge because landlord charged her a vacancy increase when she got succession rights. Landlord claimed that tenant had no succession rights. The court ruled for tenant. Landlord appealed and lost. Tenant clearly proved that she lived in the apartment as her primary residence for at least two years as her primary residence before her mother, the prior rent-stabilized tenant, moved out. Tenant submitted tax records, Con Edison correspondence, cable TV statements, bank statements, a credit report, and her daughter's school records, all listing the apartment as her address. Because tenant had succession rights, landlord wasn't allowed to include a vacancy increase in the first lease issued in tenant's name.

- Langsam Property Services Corp.: DHCR Adm. Rev. Docket No. AR410025RO (11/3/14) [3-pg. doc.]

Landlord Waited Five Years to Collect MCI Rent Hike
#25937

Rent-stabilized tenant complained of rent overcharge because landlord didn't start collecting an MCI rent hike until November 2011, five years after the DRA granted the increase. The DRA ruled for tenant, finding that landlord hadn't started collecting the MCI increase within a reasonable time. Landlord was ordered to refund $763, including interest.

Landlord appealed and won. Landlord argued that collection of the MCI increase was stayed pending tenant's PAR of the rent increase. The PAR was decided in landlord's favor but wasn't decided until late August 2011. The DHCR also had permitted landlord to collect the MCI increase starting on Nov. 1, 2011, in a related building. The DHCR pointed out that tenant's PAR of the MCI rent increase stayed collection only of the temporary retroactive portion of the increase, not of the permanent MCI increase. But the DHCR had ruled in a prior case involving the related building that landlord could start collecting the increase in November 2011.

- Clinton Equities, LLC: DHCR Adm. Rev. Docket No. CO210002RO (11/21/14) [4-pg. doc.]

No Proof of Fraud in Prior Rent Increase
#25920

Tenant complained of rent overcharge in 2013. The DRA dismissed the complaint because tenant's rent was $2,100 per month in 2009, four years before tenant's complaint was filed. The apartment therefore was deregulated on the base rent date.

Tenant appealed and lost. Tenant now claimed that landlord illegally deregulated the apartment. The registered rent increased from $620 in 2007 to $2,100 in 2008. But this increase in rent, by itself, wasn't an indication of fraud. Tenant argued that landlord couldn't have spent $60,000 renovating the apartment and that she didn't receive proper notice of the apartment deregulation. In her initial complaint, tenant claimed only that the rent was illegal. She didn't claim fraud, improper apartment renovations, illegal deregulation, lack of notice of deregulation, or pending rent reduction orders. Tenant also didn't submit proof of any of these claims with her PAR and didn't present any reasonable excuse for not raising these issues before the DRA. Tenant's initial lease stated that the apartment wasn't subject to rent stabilization, the apartment had been registered as exempt since 2008, and tenant had been paying more than $2,000 per month throughout her tenancy.

- Jimenez: DHCR Adm. Rev. Docket No. CO410005RT (11/19/14) [4-pg. doc.]

Triple Damages Revoked Upon Reconsideration by DHCR
#25903

(Decision submitted by David B. Cabrera of the Manhattan law firm of Borah Goldstein Altschuler Nahins & Goidel, P.C., who represented the landlord.)

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $129,000, including triple damages. Landlord appealed, and the DHCR reduced the total overcharge to $115,000. Landlord then filed an Article 78 court appeal, claiming that there was no willful overcharge. The case was sent back to the DHCR for reconsideration. The DHCR reduced the overcharge finding to

$26,000 after revoking the triple damages and giving landlord a credit for $27,750 in unpaid rent. Tenant then appealed, claiming that the DHCR's decision was arbitrary and unreasonable.

The court ruled against tenant since the DHCR's decision had a rational basis. The DHCR found that landlord's calculation of the legal rent was the result of technical errors. Although incorrect, landlord reasonably believed that the base rent was a preferential rent given notations on the 2002 annual rent registration. Landlord also incorrectly calculated an 11-year longevity increase by adding a full year's increase for a partial year. It was also unclear what the legal garage rent included in tenant's rent-stabilized rent should be when tenant switched garage spaces. Landlord also had attempted to refund overcharges with interest while the case was pending before the DHCR.

- Schwartz v. DHCR: Index No. 1185/14 (Sup. Ct. Nassau; 10/23/14; Winslow, J) [8-pg. doc.]

Landlord Can't Charge Fee for Dogs in Apartment #25918

Rent-stabilized tenant complained of rent overcharge after new landlord charged her $50 for having dogs in her apartment. The DRA ruled for tenant, and ordered landlord to refund the $50. The DRA also ruled that landlord can't charge tenant any fee for having dogs in the apartment and not to do so in the future. Tenant appealed and lost. There were no further grounds for tenant's appeal.

- Luciano: DHCR Adm. Rev. Docket No. CO610016RT (11/21/14) [2-pg. doc.]

No Indication of Fraudulent Scheme in Tenant's Rent History #25946

Rent-stabilized tenant complained of rent overcharge in 2013. The DRA ruled against tenant, finding no overcharge. Tenant appealed and lost. Tenant claimed that the apartment rent had been illegally increased between 1986 and 2012 and that there was a resulting rent overcharge of $104,000. The DHCR ruled against tenant. Tenant claimed fraud for the first time on appeal, so the DHCR couldn't consider that claim. In addition, there was no indication of a fraudulent scheme to deregulate the apartment. Tenant's base date rent and all subsequent rent increases conformed to applicable rent guidelines and were below the deregulation threshold. Landlord registered rents annually and never tried to amend the registrations. A mere increase in rent is not indicative of fraud.

- Neale: DHCR Adm. Rev. Docket No. CO410006RT (11/17/14) [4-pg. doc.]

No Fraud Shown in Apartment Rent History #25944

Rent-stabilized tenant complained of rent overcharge. The DRA ruled against tenant, who appealed and lost. In her PAR, tenant now claimed that landlord committed fraud before the 2009 base rent date. The DHCR wouldn't consider this claim for the first time on appeal. The DHCR also noted that there was no proof of any fraudulent scheme to deregulate tenant's apartment. Tenant's legal regulated rent at the time her complaint was filed in 2009 was less than $1,200 per month. Tenant also claimed

that there were no overcharges since 2007. The registered rents for tenant's apartment matched her 2008 and 2009 leases. Any other discrepancies between the lease rents and registered rents were minor and showed no pattern of fraud.

- Sierra: DHCR Adm. Rev. Docket No. BX210034RT (11/13/14) [3-pg. doc.]

No Proof of Fraud in Rent History #25942

Rent-stabilized tenant complained of rent overcharge in 2013. The DRA ruled against tenant, who appealed and lost. Lease records showed that on the base rent date of July 5, 2009, tenant's legal regulated rent was $1,643 and her preferential rent was $991. Later rent increases all were at legal levels. But tenant claimed that landlord committed fraud because her 2003 vacancy lease rent was $750, followed by a renewal lease in 2005 at a lease rent of $1,412 and a preferential rent of $825. But tenant didn't raise the issue of fraud before the DRA and therefore couldn't raise it for the first time in her PAR. And, even if the DHCR considered the fraud claim, there was no actual claim of a fraudulent rent increase or scheme to deregulate the apartment. Tenant's 2009 legal regulated rent was well below the deregulation threshold, the apartment had been registered every year, and the rent increases collected were in line with Rent Guidelines Board orders.

- Garcia: DHCR Adm. Rev. Docket No. BX210038RT (11/4/14) [4-pg. doc.]

No Proof of Fraud in Overcharge Case #25925

Rent-stabilized tenant complained of rent overcharge. She paid $900 per month under a vacancy lease in 2002. Tenant complained in 2013 aft her rent increased to $1,334. The DRA ruled against tenant, finding no overcharge. Tenant's rent was $1,218 on the 2009 base rent date, and rent guidelines increases collected since then were proper.

Tenant appealed and lost. Tenant now claimed fraud because the apartment rent increased 60 percent, from $677 in 2001 to $1,094 in 2002. But tenant didn't claim fraud, or submit any proof of fraud, in her initial complaint to the DRA. The DHCR refused to consider tenant's fraud claim on appeal. And, even if it did so, landlord applied legal rent increases to all rents collected after the base rent date. There was no proof that the base date rent was unreliable. And a mere increase in rent alone before the base rent date didn't indicate fraud.

- Rosa: DHCR Adm. Rev. Docket No. CM210013RT (11/3/14) [4-pg. doc.]

Landlord's Four-Year Rent History Was Incomplete #25940

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $15,000, including triple damages. Landlord appealed and lost. Landlord claimed that the overcharge wasn't willful. But landlord submitted rent history records going back only two years when it answered tenant's complaint because it didn't obtain any prior records from the prior landlord. And landlord didn't reduce tenant's rent during its time to respond to the overcharge complaint. So triple damages were properly imposed.

- Mel Service, Inc.: DHCR Adm. Rev. Docket No. CS610043RO (11/17/14) [3-pg. doc.]

No Rent Increase for Second Vacancy in Same Calendar Year #25938

Rent-stabilized tenant complained of rent overcharge. The DRA ruled for tenant and ordered landlord to refund $13,000, including triple damages. Landlord had improperly collected a vacancy increase from tenant in July 2011, after collecting a prior vacancy increase for the apartment in March 2011. The DRA also disallowed an increase for individual apartment improvements (IAIs) because the improvements were paid for after the prior tenant's lease began and landlord didn't obtain prior tenant's consent for the rent increase.

Landlord appealed and lost. Rent Stabilization Code Section 2522.8(a)(3) was amended effective June 24, 2011, to disallow more than one vacancy increase during a given calendar year. It was no excuse that the code section went into effect a week before tenant's vacancy lease started. And since landlord didn't get written consent for the IAIs from prior tenant, he couldn't collect the increase from tenant.

- Lin: DHCR Adm. Rev. Docket No. CO410007RO (11/19/14) [4-pg. doc.]

Landlord Committed Fraud and Must Refund $377,000 #25945

Tenant complained of rent overcharge. The DRA ruled against tenant because the base date rent in June 2004 was $3,200 and tenant therefore was exempt from rent stabilization based on high-rent deregulation. Tenant appealed and claimed that the DRA improperly applied the four-year rule despite evidence of fraud. The DHCR again ruled against tenant, who then filed an Article 78 court appeal. The case was sent back to the DHCR for reconsideration in light of the ruling by New York's highest court in the case of *Grimm v. DHCR*. Landlord tried to block the remand, but the court ruled that was premature. The DRA then found that there was a fraudulent scheme by landlord to deregulate the apartment.

Landlord appealed and lost. Tenant claimed that landlord's buyout of a prior tenant was fraudulent but that wasn't relevant. What mattered was that landlord couldn't prove that the next two people named as tenants after the prior tenant buyout ever had a lease or paid rent. At most, they were subtenants of the prior tenant and moved out in connection with the prior tenant buyout. The DRA also properly found that apartment improvements were done while the apartment was occupied and without the written consent from the tenant in occupancy. So no rent increase was permissible for IAIs. Apartment registration records for 2002 also indicated fraud. The apartment was registered that year as exempt due to high-rent vacancy. The 2001 rent was registered as $1,950. But this was more than the rent stated in prior tenant's lease and there was no other proof that this was the amount of rent paid. The DHCR ordered landlord to refund a total overcharge of $377,000, including interest and triple damages.

- Golden Horse Realty, Inc.: DHCR Adm. Rev. Docket No. BX410027RO (11/13/14) [1-pg. doc.]

No Rent Overcharge for Collection of HVAC Surcharges #25926

(Decision submitted by Steven H. Cohen of the Manhattan law firm of Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., attorneys for the landlord.)

Rent-stabilized tenant complained of rent overcharge in connection with HVAC services provided at the building. The DRA ruled against tenant, who appealed and lost. Tenant claimed that the HVAC charges were part of the rent and that the Public Service Commission had determined that the HVAC system didn't constitute electric submetering. Landlord pointed out that the HVAC charges were defined in tenant's lease as "additional rent." The DHCR ruled that landlord could collect surcharges for utility service that are not part of the legal regulated rent and therefore not subject to rent stabilization.

- Hidalgo: DHCR Adm. Rev. Docket No. BX210004RT (11/6/14) [4-pg. doc.]

RENT REDUCTION DENIED

Mail Delivered to Tenant's Door as Requested #25954

Tenant complained of a reduction in building-wide services. She claimed that door-to-door mail delivery service had been reduced. The DRA ruled against tenant, who appealed and lost. Tenant had notified landlord that her mail delivery preference was that mail be left on her doormat without notification. And landlord showed that mail delivery service was being provided as requested.

- Patton: DHCR Adm. Rev. Docket No. BV430015RT (11/26/14) [3-pg. doc.]

Condition Repaired Before DRA Order Issued #25955

Rent-stabilized tenant complained of a reduction in services based on the floor and wall condition in the apartment bedroom. The DRA ruled against tenant since the condition had been repaired by the time of the DHCR inspection. Tenant appealed and lost. Tenant claimed that she was unable to use her bedroom during the period that the condition existed and that she should be compensated for the inconvenience. But this wasn't a valid grounds for a DHCR rent reduction. Since the conditions had been repaired before the DRA's order was issued, no rent reduction was warranted.

- Berman: DHCR Adm. Rev. Docket No. BR410009RT (11/6/14) [3-pg. doc.]

SCRIE Rent Reduction Ended After Tenant Died #25930

Rent-controlled successor tenant complained of rent overcharge. The DRA ruled against tenant, who appealed and lost. Among other things, a rent freeze granted to prior tenant while he was receiving SCRIE no longer applied after that tenant died. The DHCR charted the full rent history for the apartment, including all applicable MCR, fuel cost, and MCI rent increases.

- McAddley: DHCR Adm. Rev. Docket No. CR420055RT (11/26/14) [10-pg. doc.]

RENT STABILIZATION COVERAGE

Building Exempt Due to Substantial Rehab #25939

Landlord asked the DHCR for a ruling on whether its building was exempt from rent stabilization due to substantial rehabilitation. The DHCR ruled against landlord, who then filed an Article 78 court appeal. The court sent the case back to the DHCR for reconsideration. The DRA then ruled for landlord. Tenants appealed and lost. Landlord proved that it had replaced 16 building systems. These were apartment ceilings and walls, intercoms, windows, doors and frames, elevator, interior stairs, roof, common areas, bathrooms, plumbing, pointing or exterior-surface repair, kitchens, gas supply, apartment floors, heating, and wiring. This constituted more than 75 percent of the building systems listed in DHCR Operational Bulletin 95-2 as required for substantial rehab.

- 29 Avenue B Tenants' Assn.: DHCR Adm. Rev. Docket No. BU410001RP (11/19/14) [8-pg. doc.]

Landlord Didn't Prove Building Was Substantially Rehabbed #25922

Landlord asked the DHCR to deregulate a building based on substantial rehabilitation performed between 1989 and 1991. The DRA ruled against landlord because four previous applications for the same relief had been denied. Landlord appealed and lost. Landlord claimed that later renovations, performed between 2008 and 2011, completed the substantial rehabilitation.

The DHCR disagreed. Landlord's first application was denied in 2003 without prejudice. Landlord's second application was denied after appeal in 2006 because landlord had denied access for DHCR inspection, had apparently increased the number of apartments, and had not obtained a new Certificate of Occupancy (C of O). Landlord's third application was denied in 2007 based on a finding that it was an improper attempt to overturn the denial of landlord's second application. Landlord's fourth application was denied in 2009 because landlord hadn't appealed the denial of its third application. The DHCR also noted that landlord had submitted a new C of O 17 years after the alterations were completed. Landlord couldn't now reopen the case with its fifth application. Landlord couldn't connect the 1989–1991 work to any work performed in 2008 to attack the prior orders. The DHCR repeatedly determined that the 1989–1991 work wasn't a substantial rehabilitation. And the 2008 work was a separate project.

- Smolarczyk: DHCR Adm. Rev. Docket No. ZK210034RO (11/13/14) [7-pg. doc.]

Landlord Must File Application to Get Ruling on Substantial Rehab #25928

Tenant claimed that he was rent stabilized and asked the DHCR to determine his status. Landlord argued that the building had 17 apartments and was exempt due to a substantial rehabilitation in 1996. The DRA ruled for tenant and said that the building was rent stabilized until there was a ruling that it had been substantially rehabbed. The DRA said that landlord must file an application using DHCR Form RS-3 to get a ruling on that question.

Landlord appealed and won. The DRA's ruling was premature. The proof submitted by landlord indicated that the building had been substantially rehabbed. Landlord submitted DOB-approved building plans and a certificate of completion, an architect's affidavit, and cancelled checks totaling $42,000. Landlord claimed that the building had been abandoned and was vacant when the work was done. Landlord also had now filed the RS-3 application. So the DRA's determination that the building was still rent stabilized was premature and was revoked.

- 525 East Realty Corp.: DHCR Adm. Rev. Docket No. BQ410045RO (11/21/14) [2-pg. doc.]

Landlord Doesn't Prove Building Was Substantially Rehabbed #25943

Landlord claimed that its building was exempt from rent stabilization based on substantial rehabilitation. The DRA ruled against landlord, who appealed and lost.

Landlord pointed out that a renovation application had been filed with DOB in 2002, and signed off on in 2010. Landlord claimed that the building was vacant while the work was being done and that the DRA found in error that it was more than 20 percent occupied during renovation. But DOB records didn't describe the scope of the work performed, and there were no work permits, engineer or architect reports, or DOB inspection records for any work done on major building systems. Landlord also had acknowledged in DOB records that plumbing work wasn't part of the project. Plans filed with DOB also included directions about the work that indicated that there were tenants in occupancy. There was no proof that the building was vacant and deteriorated when the work began in 2006. Contrary to landlord's additional claim that there were only five apartments in the building, records showed that there were six units both before 1972 and after the renovation was completed.

- Throop Towers LLC: DHCR Adm. Rev. Docket No. CR210007RO (11/6/14) [6-pg. doc.]

Tenant Moved Within Building at Landlord's Request #25901

Landlord of cooperatively owned apartment sued to evict tenant, who claimed that she was rent stabilized. The court ruled for tenant without a trial. Landlord appealed and lost. After the building was converted to a co-op through a non-eviction plan, rent-stabilized tenant agreed, at landlord's request, to move from Apartment 8E to Apartment 9I so that prior landlord could combine Apartments 8E and 8F for sale as one unit. Tenant's rent-stabilized status therefore transferred from Apartment 8E to Apartment 9I.

- 91 Real Estate Assocs. LLC v. Eskin: 2014 NY Slip Op 24366, 2014 WL 6755688 (App. T. 1 Dept.; 12/1/14; Schoenfeld, JP, Shulman, Hunter Jr., JJ)

Co-op Subtenant Not Subject to Rent Stabilization #25923

Tenant complained of rent overcharge. The DRA ruled against tenant, who appealed and lost. The building was owned by a cooperative corporation, and the apartment was owned by a shareholder-proprietary lessee. Tenant moved into the apartment after the 1996 co-op conversion and was the subtenant of the proprietary lessee. So

tenant wasn't subject to rent stabilization. Tenant incorrectly argued that the building remained subject to rent stabilization when the deed was transferred to the cooperative HDFC in 1996. And a 2010 opinion letter that tenant obtained from the DHCR stating that the apartment "seems" to be subject to rent stabilization wasn't a formal determination and had no bearing on the DRA's ruling.

- Berg: DHCR Adm. Rev. Docket No. YF410059RT (11/7/14) [4-pg. doc.]

REQUIRED SERVICES

Tenant Complains Adjoining Building Blocks Light and Air #25909

Rent-controlled successor tenant sued landlord and owner of adjoining building, and asked the court to order that the adjoining 25-story residential building be torn down. Tenant claimed that a cantilevered structure on the adjoining building covered an airshaft and blocked light and air to three of the eight rooms in tenant's apartment. Landlord and other building owner asked the court to dismiss the case, claiming that tenant had no standing to sue and no valid claim.

The court ruled for landlord. Prior landlord and prior tenant, as well as other building tenants, had signed an agreement in 1997 to permit prior landlord's development of the adjoining lot in exchange for some reconfiguration of the apartment and a reduction in monthly rent from $687 to $100. Prior landlord later sold the lot and gave adjoining owner an easement to cantilever a new building over the air shaft of tenant's building. Tenant took over his grandfather's apartment in 2013 and claimed that he was harmed by the prior agreements because a substantial portion of the living space had been removed and the statutorily mandated light and air had been cut off. But tenant cited no law giving him a right to a set amount of light and air under these circumstances. And tenant wasn't the tenant of record at the time the adjoining building was constructed and assumed his tenancy with full knowledge of the construction. There also was no decrease in required services under rent control requiring prior DHCR approval. Prior landlord and prior tenant had signed a mutual voluntary private written agreement to the reduction of light and air in the apartment. So the DHCR's approval wasn't needed.

- Lieberman v. 244 East 86th St. LLC: Index No. 156370/2013, NYLJ No. 1202677858702 (Sup. Ct. NY; 10/30/14; Singh, J)

SECURITY DEPOSITS

Tenant Forfeits Security Deposit After Early Move-Out #25911

Former tenant sued landlord for return of his security deposit. The court ruled against tenant and granted landlord's counterclaim for unpaid rent. Tenant appealed and lost. Tenant had moved out of the apartment five months before his lease expired. By the terms of the lease, tenant remained responsible for rent payment until the end of the lease term and landlord was entitled to apply tenant's security deposit to unpaid rent accruing after tenant's early vacatur. Tenant claimed that he and landlord had an oral agreement permitting tenant to move out early without penalty. But there was nothing in writing and tenant was bound by the lease provisions.

- Tosi v. Yorkshire Towers GP Co.: 45 Misc.3d 135(A), 2014 NY Slip Op 51754(U) (App. T. 1 Dept.; 12/15/14; Lowe III, PJ, Shulman, Hunter, JP)

SUBLETTING

Tenant Must Stop Short-Term Rentals While Eviction Case Is Pending #25908

Landlord sued to eject rent-controlled tenant for renting out rooms in her apartment via Airbnb to tourists and others for short-term stays. Landlord asked the court to issue a temporary injunction against tenant while the case was pending. The court ruled for landlord. Landlord claimed that tenant's actions were a substantial and incurable violation of her tenancy and obligations under rent control. Tenant advertised and rented three of the four bedrooms in the apartment on a continuous basis since at least February 2012. More than 110 guests had rented rooms for stays ranging from three days to three weeks. From January 2014 through September 2014, tenant earned more than $6,500 per month, which was far in excess of her monthly legal rent of $4,477. In addition, tenant paid only $4,193 because she received SCRIE benefits.

The court agreed that this was profiteering and fraud against landlord. The court stated that tenant's rentals probably violated not only the Rent Control Law but also the Multiple Dwelling Law (MDL). The court disagreed with tenant's claim that there was no MDL violation because she continued to reside in the apartment while renting rooms to other occupants for stays of less than 30 days. The case was adjourned to February 2015 for a hearing on whether to continue the injunction against further rentals by tenant pending a ruling on whether tenant could be evicted.

- Brookford, LLC v. Penraat: 2014 NY Slip Op 24399, 2014 WL 7201736 (Sup Ct. NY; 12/19/14; Edmead, J)

TAXATION

Mitchell-Lama Conversion to Private Co-op Not Taxable Real Estate Transfer #25910

Trump Village, a Brooklyn housing development since 1961, left the Mitchell-Lama program in 2007 to become a private cooperative building by paying the mortgage, dissolving, and then reforming as a private co-op corporation. In 2009, the city notified Trump Village that it owed more than $21 million in real property transfer taxes because of the restructuring. Trump Village sued the city and lost. The court reversed on appeal, finding that the 2007 privatization wasn't really a transfer of property and that, after amending its certificate of incorporation, Trump Village remained the same entity and didn't have to pay the transfer tax.

The city then appealed to New York's highest court and lost. The Trump Village cooperative corporation's voluntary dissolution, reconstitution, and termination of its participation in the Mitchell-Lama affordable housing program wasn't a taxable transfer of real property.

- Trump Village Section 3, Inc. v. City of New York: 2014 NY Slip Op 08788, 2014 WL 7150362 (Ct. App.; 12/17/14; Abdus-Salaam, J)

TENANT NUISANCES

Cigarette Smoke Odor from Tenant's Apartment Not Proved Hazardous #25907

Landlord, the shareholder and proprietary lessee of a cooperative apartment, sued to evict tenant for violating the building's house rules. Landlord claimed that tenant unreasonably allowed cigarette smoke to escape into and permeate through the public hallway outside the apartment. Landlord claimed that other tenants had complained and that tenant had ignored requests to cure this condition. Tenant denied any wrongdoing, and claimed that landlord and the co-op board were hostile toward her and intentionally inflicted emotional distress.

The court ruled against landlord after trial. Testimony showed that, while there may have been an occasional odor in the public hallway, landlord failed to prove that the odor was so offensive as to interfere with the rights, comfort, or convenience of other tenants. Landlord presented no evidence from an expert to prove that the air content or the odor was dangerous or hazardous. And only tenant's next-door neighbors complained. There were no complaints from upstairs or downstairs neighbors despite the vertical ventilation shafts in the building. The neighbor who testified couldn't state how many times he smelled "even a faint smell of smoke" in the hallway in 2013 and 2014. And his wife's testimony that the cigarette smoke offended her was insufficient for a finding of lease violation. Another building resident and former co-op board member also testified that she didn't smell cigarette smoke in the hallway.

- 201 West 89th Owners, Inc. v. Mostel: 46 Misc.3d 1201(A), 2014 NY Slip Op 51756(U) (Civ. Ct. NY; 12/2/14; Wendt, J)

WARRANTY OF HABITABILITY

Tenant Gets 100% Rent Abatement #25953

Landlord sued to evict Section 8 tenant for nonpayment of rent. Tenant claimed breach of the warranty of habitability. The court ruled for tenant and granted her a 100 percent rent abatement through Dec. 31, 2014. After Hurricane Sandy in October 2012, tenant notified landlord of continual kitchen sink drain backup, a noxious odor from the kitchen sink, and mold, mildew, and uneven floor conditions. Tenant was forced to evacuate the apartment for two weeks but was unable to remain in the apartment after that because landlord failed to make repairs. Tenant's son also was diagnosed with asthma in 2013 and experienced symptoms after spending time in the apartment. The court also ordered landlord to correct any outstanding violations.

- NYCHA-Coney Island Houses v. Feliciano: Index No. 011616/2014, NYLJ No. 1202713072279 (Civ. Ct. Kings; 12/12/14; Sikowitz, J)