

HOUSING COURT COMMITTEE NEWS

By Newsletter Subcommittee

SPRING 2016 Edition

Going Undercover to Fight Housing Discrimination

The Real Deal reports that Gov. Cuomo announced a statewide initiative to crack down on housing market discrimination. Under the new program, three private agencies will train undercover operatives to pose as potential buyers or renters and sniff out violations of the Fair Housing Act. The sting operation will also seek to identify violations of the state's human rights laws by agents, brokers, or landlords.

Preserving a Neighborhood's Character or its Racial Composition?

The 2nd Circuit upheld a finding that the Village of Garden City discriminated against minorities in its zoning decisions. The Village officials had issued a decision to rezone newly acquired land to exclude most multiple-dwelling residences following a hearing with its residents. The 2nd Circuit assessed that the utilization of words like "character" and "flavor" of the neighborhood by residents during the hearing belied racial bias and were instrumental in compelling the Village to make the aforementioned zoning decision. Judge Pooler wrote, "Garden City's argument appears to boil down to the following — because no one ever said anything overtly race-based, this was all just business as usual. But the district court was entitled to conclude ... that something was amiss here, and that Garden City's abrupt shift in zoning in the face of vocal citizen opposition to changing the character of Garden City represented acquiescence to race-based animus."

If You Can Make It Here....

US News and World Reports survey ranks New York City as the 96th most appealing place to live in a list of 100 major American cities, behind even New Haven. The Survey cites the rising cost of housing as the major reason for New York's low ranking.

Evictions Drop to Lowest Level in 7 Years

A drastic decrease in 2015 led to a ten year low for total evictions. The 18% year-over-year decline occurred despite the total number of nonpayment cases falling by only 2% from 2014.

Justice Fern Fisher touted the City's recent efforts in funding legal services for the poor, as well as the HRA's efforts to expedite emergency payments as key factors leading to the decrease.

However, the Rent Stabilization Association's Michael Posilkin suggests the drop in evictions may result from other, less sanguine causes — such as a reduction in housing court personnel, with corresponding delays preventing nonpayment cases from being resolved.

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Property Tax Ceiling Bill Passes Senate

Housingwire.com reports that earlier this month the New York Senate passed a bill placing a cap on increases to New York City's property tax rate. All increases will be limited to the minimum between 2% or the inflation rate, as measured by the Consumer Price Index. The Senate estimates that this bill would lead to a total tax savings of \$4.5 billion by 2019 for New York property owners.

The bill's sponsor, Senator Andrew Lanza, stated that "This legislation will put an end to out of control tax increases that are being forced upon us. New York City's government needs to live within its means in the same way families are forced to do."

According to Mayor Bill de Blasio, however, the bill is unlikely to be enacted as law, adding that such a "cap would be very dangerous for New York City."

City Council Putting the Heat on Heat

RegBlog reports that the New York City Council is considering a bill that would raise standards for the minimum indoor temperature allowable in residential apartments. This bill also would eliminate outdoor temperature as a mitigating criterion the standards.

The current law requires a minimum indoor temperature of 68 degrees Fahrenheit when it is below 55 degrees outside during the day. If the temperature drops below 40 degrees at night, the minimum indoor temperature is 55 degrees.

According to Vito Mustacioulo, Deputy Commissioner for the Office of Enforcement and Neighborhood Services at the HPD, reliance on the rapidly fluctuating outdoor temperature makes it more difficult for landlords to comply with the requirement as well as for tenants to get complaints accurately assessed. Other cities, such as Chicago and Philadelphia, have minimum heat ordinances that do not depend on outdoor temperature.

The proposed ordinance would raise the minimum indoor temperature to 72 degrees during the day, and 65 degrees overnight.

421A Program Ends—For Now

The 421A tax abatement program, which granted subsidies to developers for offering affordable units in new buildings, expired last month when labor talks between the Real Estate Board of New York and the construction workers' union, the Building and Construction Trades Council of Greater New York, broke down. It is still possible that a later agreement will revive the program.

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Describing the Housing Court to the Uninitiated

In a March, 2016 letter to the editor of the Queens' Tribune, retired Housing Court Judge George Heyman explains the function of the court and offers his reflections on the litigation process, weighing the concerns and travails of both landlords and tenants.

AirBnB Battle in New Orleans

AirBnB and similar short-term rental/home sharing sites are now a subject of contention and debate amongst the residents in New Orleans. While it appears all sides can agree that short-term renting should be regulated, no side is quite sure how to either craft new and appropriate legislation or enforce existing regulations within the new paradigm.

In the (Newly Modified) Zone

On 22 March 2016, the City Council passed major changes to the City's Mandatory Inclusionary Housing (MIH) and Zoning for Quality and Affordability (ZQA) rules. The changes aim to further the City's goals of providing additional affordable housing and moderating the effects of gentrification.

The changes to the MIH add, among other things, a affordability benchmark, making 20% of floor area affordable for families at or below 40% of the Average Median Income, which currently sits at \$31,000 a year for a family of three.

Likewise, the ZQA was modified to further the City's goal of providing affordable housing, especially to seniors. Developers will have access to a more flexible building envelope, with allowances for building taller and without attached parking when constructing affordable senior housing, or being able to include features like courtyards and bay windows.

NYCHA Lead

The U.S. Justice Department has opened a civil investigation into NYCHA over lead poisoning concerns.

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Housing Court Briefs

Ouyang v Cromelin, 2016 NY Slip Op 26041, Appellate Term, First Department

The Appellate Term decided that when the landlord's work permit was revoked and a stop work order issued, the tenant's refusal of access was not in violation of the lease. This decision was issued after LL filed an appeal of Judge Stoller's decision (which made the front page of the Law Journal last year). A similar case was filed by the same landlord against another tenant in the building and Judge Saxe reached a different conclusion after trial. Ultimately, the Appellate Term agreed with Judge Stoller, ruling in favor of the tenant.

Additional reading: <http://www.nytimes.com/2015/03/10/nyregion/a-battle-for-light-and-air-at-an-upper-east-side-building.html>

310 E. 4th St. HDFC v Brandstein, 2016 NY Slip Op 50051(U) [50 Misc 3d 135(A)], Appellate Term, First Department

Premises located in a building used exclusively for charitable purposes on a nonprofit basis are exempt from rent stabilization.

42nd & 10th Assoc., LLC v Izeki, 2015 NY Slip Op 51915(U) [50 Misc 3d 130(A)], Appellate Term, First Department

Notice to cure is not required when a tenant profits on a sublease, renting an apartment for a short period of time through the Airbnb website. Such action commercializes the rent stabilized apartment from the beginning of tenancy.

DMARC 2007-CD5 212th St. LLC v Rijo, 2016 NY Slip Op 50053(U) [50 Misc 3d 135(A)], Appellate Term, First Department

A month-to-month holdover was properly dismissed where the basement apartment in question was properly registered as a rent stabilized unit and the rent stabilized lease was still in effect despite the landlord's contention that the basement rental is not legal.

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191 St. Assoc. LLC v Cruz, 2016 NY Slip Op 50116(U), Appellate Term, First Department

The Appellate Term in the First Department decided that a tenant should not have been afforded yet another opportunity to pay arrears. The decision comes after 9 Orders to Show Cause, the last of which being granted a full 15 months after the case was filed. 28 prior non-payment proceedings had also been through the Coutt. Judge Ling-Cohen pointed out in her strongly worded, 7-page dissent that the majority ignored some mitigating factors: that the tenant was disabled and infirm; that a GAL was never appointed; and that tenant was a long-term resident of over 34 years. Additionally, Judge Ling-Cohen focused on the fact that the arrears for which the tenant was evicted were in fact previously incurred legal fees applied improperly by the landlord to the tenant's rental payments.

Estate of Del Terzo v 33 Fifth Ave. Owners Corp. 2016 NY Slip Op 01039, Appellate Division, First Department

Appellate Court ruled that a co-op breached a lease by withholding its consent to transfer shares from a deceased shareholder to his two sons. The co-op's reasoning behind the denial of the assignment was the fact that one brother who ultimately occupied the apartment didn't meet corresponding financial requirements. Additionally, the co-op contended that while the other brother met the financial criteria, he lived somewhere else. The co-op was likewise concerned with the potential for overcrowding. The majority found the withholding unreasonable. Strong dissent.

West 151 St. Realty Co LLC v Manguelle, 2016 NY Slip Op 50072(U) [50 Misc 3d 1210(A)], Civil Court Of The City Of New York, New York County

In a non-payment proceeding, Judge Kraus denied the petitioner's motion to dismiss a counterclaim for harassment and dealt with a respondent's overcharge claim.

1234 Broadway LLC v Hsien Hua Ying, 2016 NY Slip Op 50190(U) [50 Misc 3d 140(A)], 2016 NY Slip Op 50190(U) [50 Misc 3d 140(A)]

A subtenant in an illegal sublet holdover proceeding is not a necessary party to the proceeding.

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Mariners Residence Inc. v Arnold, 2016 NY Slip Op 26054, Civil Court Of The City Of New York, Richmond County

The adult home filed a non-payment proceeding against several of its residents pursuant to Social Service Law Article 7 Title 2. The filing was done in the Housing Court. The Court found that the relationship of a resident to a Social Services Law facility is an essential analog to that of the archetypical "landlord-tenant" relationship. As such, the case must be heard in Civil Court.

Andrews v. Acacia Network, 11437/16, Civil Court, Kings County, Cite as: Andrews v. Acacia, 11437/16, NYLJ 1202751018145, at *1 (Civ., KI, Decided February 23, 2016)

In this illegal lockout case, the petitioner was a resident of a supportive facility providing services to individuals with substance abuse problems. He was administratively discharged as a result of his breach of the rules and regulations dictated by the facility - to wit, he was smoking in the facility. The Court found, however, that the petitioner had resided in the facility for over six months and therefore is entitled to statutory protections under RPAPL.

Fernandez v. Cronealdi, L&T 85314/2015 Civil Court, Kings County Cite as: Fernandez v. Cronealdi, L&T 85314/2015, NYLJ 1202751732899, at *1 (Civ., KI, Decided February 10, 2016)

The subject premises were found to be occupied by six separate individuals and therefore subject to Rent Stabilization Law. Holdovers were subsequently dismissed.

78 Havemeyer LLC v Abuzaid, 2016 NY Slip Op 50238(U), Civil Court Of The City Of New York, Kings County

Two adjacent buildings with three units a piece were found to be horizontal dwellings and thus subject to Rent Stabilization Laws. The buildings have common owners, were always conveyed by a single deed, and shared the same management company, heating system, mortgage, and insurance policy.