TESTIMONY

ON

PROPOSED AMENDMENTS TO THE RENT STABILIZATION CODE

PRESENTED BEFORE:

NEW YORK STATE DIVISION OF
HOMES AND COMMUNITY RENEWAL

PRESENTED BY:

JASON BLUMBERG
SENIOR STAFF ATTORNEY
MFY LEGAL SERVICES, INC.

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MFY envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. More than 40% of our work involves landlord-tenant matters on behalf of low-income New Yorkers including seniors, persons with disabilities, and residents of SROs and Three-Quarter Houses. MFY Legal Services, Inc. (MFY) supports the majority of the proposed amendments to the Rent Stabilization Code ("RSC"), which will strengthen existing protections for tenants, preserve affordable housing and help curtail homelessness.

The majority of the proposed amendments strengthen protections for tenants.

The proposed amendment to 9 NYCRR §2522.5(c) will require renewal leases to contain riders describing with detail how the rent was adjusted from the prior legal rent, while the proposed amendment to §2523.5(c) will prevent "deemed" lease renewals. Among other benefits, these amendments will prevent erroneously-calculated rents and incorrect lease terms from carrying forward automatically, and require a clear explanation of each rent adjustment. These improvements in the existing law address a persistent problem for some rent stabilized tenants.

For example, MFY client Ms. S was a rent-stabilized tenant of 30 years, during which time her landlord rarely provided her with a proper renewal lease. Frequently, the landlord misstated the new term of her tenancy or the amount of her new legal rent. If Ms. S refused to pay a rent increase without a proper renewal lease or a proper calculation of the new legal rent, the landlord would commence a nonpayment proceeding to enforce a "deemed" renewal, alleging that Ms. S had refused to sign her new lease. This pattern persisted for years, requiring that Ms. S appear in Housing Court repeatedly to defend the nonpayment proceedings and to obtain properly calculated renewal leases. Only after MFY began representing Ms. S did the landlord cease this abusive practice.

The proposed amendments to 9 NYCRR §2522.5(c)(1) and 9 NYCRR §2523.5(c)(2) & (3) will ameliorate the problem that has plagued Ms. S's tenancy. If she seeks clarification of the terms of a proposed renewal lease, her landlord will not be permitted to claim that the lease has been deemed renewed without providing her with a detailed calculation of the adjustment to the legal rent. Although, theoretically, the landlord was always legally obligated to provide such a renewal lease, the proposed amendments would clarify and strengthen this requirement.

Certain of the proposed amendments should be modified to provide greater protection for tenants.

The proposed amendment to 9 NYCRR §2525.5, which adds a new specific example to the general proscription against harassment of tenants and clarifies that harassment includes actions taken by an owner to prevent a tenant from exercising any rights under the code, should be passed. In addition, MFY recommends that the proposed redefinition of harassment be broadened to include:

"[A]ny nonpayment proceeding brought against a tenant with the Senior Citizen Rent Increase Exemption (SCRIE), where the only amounts in controversy are tax abatement credits owed by the SCRIE program and no rent is owed by the tenant."

This additional language would provide protection where the financial incentive to force long-term tenants to relinquish their homes is greatest. Senior citizens are more vulnerable to getting evicted than their younger low-income counterparts, due to age-related dementia, physical infirmities and social isolation. They are targets for landlords because their long-term tenancies – in many cases, decades-long – mean their rents are far below market rate. This provides landlords with great incentive to evict long-term elderly tenants. By adding the above language to the redefinition of tenant harassment, HCR can make it clear that owners are prohibited from bringing nonpayment proceedings against tenants with SCRIE where the tenant doesn't personally owe any rent at all, and any such suits should presumptively be considered harassment. Clarifying by amendment that an owner may not seek the SCRIE portion of the rent from a tenant would merely codify settled case law.

As an example, Ms. G, a 90 year old tenant and client of MFY, has lived in her apartment for 50 years and has had SCRIE for the better part of a decade. The owner of her apartment claims to have ongoing difficulty obtaining the proper amount of credit from the SCRIE program due to problems with administration of the program. Whenever these problems allegedly arise, the owner commences a nonpayment proceeding against Ms. G. Even though MFY has repeatedly appeared in court and preserved Ms. G's tenancy, the repetitive and futile litigation has interfered with Ms. G's peace of mind and quality of life and is precisely the type of landlord conduct that 9 NYCRR §2525.5 is designed to prevent.

The proposed amendments should clarify the sections of the RSC that courts have interpreted in a manner contradictory to the purpose of the law.

Although the proposed amendments to the RSC strengthen and clarify existing protections for tenants, additional remedial legislation is warranted. For example, the law on tenant succession under 9 NYCRR §2523 as interpreted by the courts has subverted the legislative purpose of succession rights: to allow the family members of rent stabilized tenants to stay in their homes after the tenant of record moves out of the apartment or dies.

9 NYCRR §2523.5(b) grants succession rights to occupants who lived in the apartment with the tenant as their primary residence for prescribed periods *prior to the permanent vacatur of the apartment by the tenant*. Yet courts have held that even though evidence proves that a rent stabilized apartment is no longer the named tenant's "primary residence" for the purpose of preserving their claim to tenancy, the tenant has not "permanently vacated" the apartment so as to allow a successor to be recognized.

For example, if a named tenant suffers a health crisis and is forced to move to a nursing home but the rent continues to be paid in his name, First Department courts hold that the tenant has not "permanently vacated" the apartment. In such cases, courts routinely order the eviction of family members who remain living in the apartment, denying them the right to succeed to the rent regulated tenancy. Many otherwise eligible successors end up losing their homes. See e.g, Third Lenox Terrace Associates v. Edwards, 23 Misc. 3d 126(A), 881 N.Y.S.2d 367 (App. Term 1st Dep't 2009), aff'd, 91 A.D.3d 532, 937 N.Y.S.2d 41 (App. Div. 1st Dep't 2012) (where a family member was denied their succession rights on the basis that the tenant of record had, among other things, continued to pay the rent). This places the remaining family members, often already burdened with the emotional task of transitioning their loved one from a life of independence into a nursing home, at risk of homelessness. The uncertain length of a patient's stay in a nursing home or other long-term care facility should not result his family's loss of shelter. Yet it does.

Our colleagues at The Legal Aid Society and Legal Services NYC have proposed an amendment that would remedy this harsh result and afford eligible successors the opportunity to assert their rights to the tenancy. The proposal would amend 9 NYCRR §2520.6 to include a subsection (v) that defines "permanent vacatur date":

"The date of vacatur shall be determined to be the first date that the tenant has established a primary residence in another housing accommodation. Temporary visits to the stabilized residence will not effect the permanent vacatur date. Signing a renewal lease for the stabilized accommodation shall not be used as evidence of the permanent vacatur date."

MFY fully endorses this amendment and urges HCR to adopt it.

Conclusion

MFY Legal Services supports the passage of the proposed amendments to the RSC, and we respectfully urge HCR to adopt the amendments without delay. We believe that the majority of the proposed amendments add clarity and emphasis to existing protections for tenants. In addition, HCR should consider further strengthening the RSC by amending subsection NYCRR §§2523.5(b) and 2520.6 to protect otherwise eligible successor tenants from eviction.

For any questions about this testimony, please feel free to contact Jason Blumberg at (212) 417-3711 or jblumberg@mfy.org, or Christopher Schwartz at (212) 417-3755 or cschwartz@mfy.org.