



TESTIMONY

ON

HARASSMENT OF ELDERLY TENANTS

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL'S
COMMITTEE ON AGING

PRESENTED BY:

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I. Introduction

MFY Legal Services, Inc. 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.

Each year, MFY serves more than 2,000 New Yorkers who are at least 60 years old, through our Manhattan Seniors Project, Consumer Rights Project, Mental Health Law Project, Adult Home Advocacy Project, Nursing Home Residents' Project, Foreclosure Prevention Project, Neighborhood Preservation Project, and Lower Manhattan Justice Project. MFY is also part of the Assigned Counsel Project, through which the Manhattan Housing Court refers cases involving tenants over 60 years of age who are facing eviction. The Assigned Counsel Project is an important first step towards a right to counsel for people facing the loss of their homes.

II. Our Clients' Experiences

The majority of the seniors who seek our help are in danger of eviction and/or are living in unacceptable housing conditions. Many are long-term rent stabilized or rent controlled tenants with affordable rents. Indeed, it is their continuing presence that secures much of the affordable housing in Manhattan. This continuing presence is also, as the Committee has noted, what makes them a target of harassment by landlords and investors looking for high rates of return on these "underutilized" apartments.

The wave of "predatory equity" and accompanying harassment has been well documented. In response, the City Council passed Local Law 7, the tenant harassment law, in 2008. MFY's experience since then demonstrates that landlord harassment of senior tenants has continued. We still commonly see typical harassment tactics: baseless non-primary residence eviction cases; vague nuisance allegations; withholding of repairs and maintenance while unregulated – and younger – tenants in the same building receive prime services; and even gut renovations of buildings while small groups of regulated tenants are still living there – almost literally running roughshod over elderly holdouts.

For example, in the last week, MFY has received phone calls from two tenants over 60 whose landlord has accused them of not living in their rent-controlled apartments solely on the basis of credit reports that do not show recent transactions from their addresses. Such automatically-generated eviction cases are the hallmark of systematic harassment. In cases like this, landlords use unreliable computer searches to create flimsy claims that tenants do not live in their apartments. The mass-produced nature of these claims means that for every senior citizen who contacts MFY, there are a dozen more who have received identical notices. Indeed, the landlord in these particular cases currently has 23 open holdover proceedings in Manhattan Housing Court. The majority of these tenants are elderly and have low rents. Some of them will default because they will not know how to contact a legal services lawyer, or the legal services organization will not have capacity to represent them. Some cannot physically make it to court and will be defaulted for not appearing. Those who do make it to court on their own will likely

sign damaging stipulations that they do not understand that have been drafted by the landlord's attorney.

III. Recommendations

Landlord harassment of elderly tenants continues because it works, and it works because the professional harassers can rely on the fact that 90%¹ of tenants in New York City Housing Court are unrepresented. When a tenant is represented by an attorney, it is easy to have these frivolous cases dismissed. The most effective tactics of tenant harassment would disappear if every tenant over 60 were guaranteed representation in court when they faced the loss of their homes. While we understand that this is a long-term goal, there are many smaller steps that the City can take to make harassment less profitable for landlords and investors and less costly to the City agencies who deal with its aftermath – homelessness, hospitalization, and the loss of affordable housing.

1. Expand the Assigned Counsel Project

In 2012, MFY and our partners at the Northern Manhattan Improvement Corporation represented 125 elderly low-income tenants referred to us by the Manhattan Housing Court through the Assigned Counsel Project funded by the New York City Department for the Aging (DFTA). This is just a drop in the bucket. What we have learned from our work is that Housing Court judges are well-positioned to identify tenants whose age and disability make them especially vulnerable to even the flimsiest claims when combined with the bewildering environment of the court. When judges have nowhere to refer such tenants, the Court becomes an instrument of the harassers, and overwhelmed judges often rubber-stamp one-sided, meritless stipulations. When a judge can refer an elderly tenant to the Assigned Counsel Project, then the Court can fulfill its role as a backstop against frivolous, harassing eviction suits.

2. Continue and Expand Support for Legal Assistance for Seniors

MFY, along with other legal services providers, also represents elderly tenants through another grant from DFTA. In 2012, MFY spent more than 3000 hours providing legal services to nearly 600 elderly tenants outside of the Assigned Counsel Project. Still, because of capacity limitations, we sadly must routinely decline to represent half of the elderly tenants who contact us with an eviction case. We strongly encourage the Council to continue and expand DFTA's support for legal services for the elderly.

3. Financially Support Tenant Organizing

The City can also combat elder harassment by expanding its support for the organizations that help long-time tenants form tenant and neighborhood associations. Harassment is a systematic,

¹ See Paris Baldacci, Assuring Access to Justice: The Role of the Judge in Assisting Pro Se Litigants in Litigating Their Cases in New York City's Housing Court, 3 Cardozo Pub. L. Pol'y & Ethics J. 659, 661 at n.5 (2006) (noting that a 1993 study found 11.9% of tenants were represented and that evidence suggests this number has not increased significantly since that time); see also Woodruff Corp. v. Lacrete, 154 Misc.2d 301, 304 585 N.Y.S.2d 956, 958 (Civ. Ct. Kings Cty 1992) (then-Housing Court Judge Marcy S. Friedman cited a variety of studies confirming that "landlords are represented in approximately eighty to ninety percent of summary eviction proceedings, while tenants are unrepresented in all but ten to fifteen percent of such proceedings..."). The recent economic downturn and decreased funding for legal services both suggest that this disparity may be more drastic at present. See C.J. Jonathan Lippman, The State of the Judiciary 2012, 2012 N.Y. C.J. Ann. Rep. at 1, 11-12 (February 14, 2012), available at <http://www.nycourts.gov/admin/stateofjudiciary/SOJ-2012.pdf>.

building-wide, neighborhood-wide practice. Elderly tenants are less vulnerable when they are joined and supported by their neighbors, both elderly and younger. Indeed, Local Law 7 was written with large group legal actions in mind and has been used most effectively in those actions, such as the Vantage Properties lawsuit three years ago.² As legal services lawyers for the elderly, we need strong community partners. With the help of a community organizer, we can represent 50 tenants in the time (both ours and the Court's) it would ordinarily take to represent one, and we can address harassment as the large-scale issue that it is.

4. Strengthen the Tenant Harassment Law

Unfortunately, Local Law 7 has been less effective as a tool for individual tenants to combat harassment. A harassment claim now results in, at most, a single Housing Maintenance Code "C" violation – the equivalent of a single broken window –with accompanying civil penalties measured in the hundreds of dollars. This is not significant deterrence to a landlord expecting to profit more than \$2,500.00 per month in perpetuity if it can drive out an elderly rent controlled tenant. It is within the Council's power to increase the civil penalties for harassment violations so that they are more than a minor cost of doing business for predatory harassers.

5. Shine a Spotlight on Harassers

MFY also encourages the Council to identify and investigate specific bad actors – large landlords, particularly those backed by predatory equity, and the law firms who file frivolous actions on their behalf. Holding a hearing and collecting testimony on the practices of even one of these bad actors and the stories of their tenants would be a powerful example that would deter other bad actors. Action by the Council could also leverage outside resources from the New York State Attorney General's office and private law firms seeking rewarding pro bono opportunities.

IV. Conclusion

MFY's recommendations are only the beginning of the actions that can be taken to combat harassment of elderly tenants. MFY looks forward to an ongoing dialogue with the Committee and with Council Members' offices with whom we are already working.

MFY Legal Services thanks the Committee on Aging for holding this oversight hearing on an issue that is of critical importance to older New Yorkers. MFY is committed to working with the City Council to protect the safety and affordable housing of older New Yorkers so that they can age in place and continue to be the backbone of New York City communities.

² See *Aguaiza v. Vantage Properties, LLC*, 69 A.D.3d 422 (1st Dep't 2010). Tenant groups, legal services providers, and then-Attorney General Andrew Cuomo reached a comprehensive settlement agreement with Vantage Properties instituting tenant protections against future harassment. A copy of the settlement agreement is available at http://www.ag.ny.gov/sites/default/files/press-releases/archived/Vantage_AOD.pdf.