

**Testimony of State Senator Liz Krueger**

**Before the New York State Division of Housing and Community Renewal**

**Regarding Proposed Amendments to the Rent Stabilization Code**

August 28, 2012

My name is Liz Krueger and I represent the 26th Senate District, which includes the Upper East Side, East Midtown, and Midtown areas of Manhattan. I want to thank you for providing me with this opportunity to testify regarding the Division of Housing and Community Renewal’s (DHCR) proposed amendments to the Rent Stabilization Code (RSC), the regulations which govern the enforcement of New York State’s rent regulation laws. While some may think agency regulations are an esoteric issue, the rules and regulations contained in the RSC directly impact the daily lives of the more than two million New Yorkers who live in rent regulated housing.

While not perfect, New York State’s rent regulation system is by far our largest and most important affordable housing program. It enables close to two million people, the vast majority of whom are moderate- or low-income, to live in safe and affordable housing. The continuation of an improved rent regulation system is essential to our efforts to keep hardworking residents in New York and to ensure the maintenance of healthy and stable communities. Rent regulation helps to counteract the destabilizing effects of the acute housing shortages and abnormal market conditions in New York City, where the vacancy rate for rental housing is less than three percent, and the surrounding suburbs, where the vacancy rate remains below five percent. If we truly want to maintain the economic vitality and diversity of our state, we must do all we can to ensure an effective rent regulation system.

Unfortunately, the strength of our state’s rent regulation system has been significantly undermined over the last two decades by the erosion of the laws and regulations governing it. The weakening of the laws and regulations governing rent-regulated housing has made it much easier for irresponsible landlords to take advantage of loopholes to evict regulated tenants, fraudulently increase rents, harass tenants, and illegally deregulate apartments. These loopholes have already led to the loss of more than 300,000 rent regulated, affordable apartments in New York City and the surrounding counties since 1994. Unless the laws and regulations governing rent and eviction protections are significantly strengthened, we will likely lose hundreds of thousands of additional affordable homes during the next decade.

**Many of the most harmful changes to New York’s rent regulation system, such as the creation of vacancy and high-rent decontrol, were the result of legislative action, and therefore outside of the control of the DHCR. However, there is no question that the extensive changes DHCR made to the rules and regulations governing rent regulation in 2000, 2003, and 2005 substantially undermined the protection of rent regulated housing and tenants’ rights.**

In 2000 alone, the DHCR approved over 150 pages of dramatic changes to the RSC that made it significantly easier for landlords to increase rents and deregulate apartments, and created numerous hurdles for tenants to fight rent overcharges, landlord harassment, and improper deregulation proceedings. These changes included: eliminating most penalties for landlords who fail to register their apartments annually, reducing the types of conditions eligible for redress through reduction-in-service complaints, preventing tenants from using older rents as part of an overcharge complaint, making it easier for tenants to waive their rights under the rent laws, and allowing landlords to receive two or more Rent Guidelines Board increases in the same year.

**These sweeping pro-landlord changes to the RSC were implemented by the DHCR with little public debate despite the fact that in many cases they directly contradicted the legislative intent of the Rent Stabilization Law and/or settled judicial jurisprudence, and usurped the power of the Legislature. These amendments were so harmful that they were described at the time as “an attempt to deregulate apartments on a wholesale basis” by a wide coalition of New York City legal aid and legal services organizations.**

**While the amendments made to the RSC in 2003 and 2005 regarding the sub-metering of electricity and preferential rent were much less far-reaching than the 2000 amendments, they similarly made it easier for landlords to raise rents. Taken as a whole, the changes to the RSC implemented in 2000, 2003, and 2005 by DHCR seriously undermined public confidence in the agency’s impartiality and ability to preserve rent regulated housing.**

I was extremely pleased that the June 2011 legislation renewing New York’s rent regulation laws included a provision requiring DHCR to *“promulgate rules and regulations to implement and enforce all provisions of this act and any law renewed or continued by this act*.” Legislators and tenant advocates understood this provision to mean that the DHCR would make substantive changes to the RSC that would begin to balance to the implementation of the rent regulation laws that had been lost following the 2000, 2003, and 2005 amendments. Since the passage of the June 2011 law, I, along with many other legislators, tenant advocates, and legal services attorneys have repeatedly shared with DHCR and the Governor’s office the essential amendments to the RSC that are needed to restore fairness and curtail the rampant violation of the rent laws. We were hopeful that DHCR would finally take action to close many of the most egregious loopholes in the RSC that have created economic incentives for landlords to pay highly-speculative prices for rent regulated properties, harass tenants, and fraudulently increase rents.

Unfortunately, more than a year after the passage of a law requiring the DHCR to implement changes to the RSC to strengthen the enforcement of the rent laws, no substantive changes have been proposed. The amendments to the RSC currently under consideration are far from substantive and will do little to improve the protection of rent regulated housing. The proposed amendments are simply technical amendments to bring the RSC in line with the changes in state law made by the Rent Act of 2011 to the thresholds for “high-rent, high-income” deregulation and to the Individual Apartment Improvement (IAI) surcharges that can be charged to tenants living in buildings with more than 35 apartments.

**I am deeply disappointed that we are not here today discussing comprehensive amendments to the RSC that would enable the DHCR to effectively and proactively protect the close to a million rent regulated homes in New York. While some positive actions have been taken by the DHCR leadership in the last few years to improve the agency’s procedures, and I am pleased by the establishment of the Tenant Protection Unit, much more needs to be done to restore public confidence and equitably enforce the law.**

**However, in order to truly begin to slow the loss of rent regulated housing, the DHCR must make substantive amendments changes to its enforcement procedures and regulations. An important first step would be the reversal of the extremely harmful amendments made to the RSC in 2000, 2003, and 2005. Additionally, based upon countless discussions I have had with over the years with housing organizations, policy experts, lawyers, my constituents, and many of my colleagues in government regarding the most significant challenges facing rent regulated housing, I believe the DHCR must make substantive changes to its procedures and regulations governing a number of other key areas which I outline below**.

**Major Capital Improvements (MCIs)**

MCI applications are one of the easiest ways for landlords to easily obtain substantial rent increases and deregulate apartments. While many MCI applications are legitimate, and landlords should be encouraged to maintain their properties, the failure to closely examine MCI applications has led to substantial fraud and improper rent increases. The DHCR must develop a proactive and comprehensive evaluation system for MCI applications to ensure that all parties know fraud will not be tolerated.

Building inspectors are almost never sent by the DHCR to ensure that landlords have made all of the filed building changes and improvements. As a result, it is impossible to determine whether improvements the landlord claims to have made were actually made or whether the costs claimed were legitimate. Additionally, the current system of relying only on the submission of a contractor’s or architect’s self-certified statement is not sufficient to insure that work is completed properly and that fraudulent claims are not being approved. There have been documented instances where tenants are left paying higher rents when no structural improvements have occurred or when the costs for minimal improvements did not justify significant permanent rent increases.

Unless a tenant initiates a challenge to an MCI application, the DHCR usually does not investigate. Even in cases where a tenant challenge leads to an agency investigation and a finding that the MCI application was flawed, the MCI is merely decreased or denied. Because there is no additional penalty for landlords who file fraudulent applications, there is little to dissuade dishonest building owners from exaggerating or misrepresenting the costs and type of work completed. The DHCR must conduct independent random audits of MCI claims; increase the size of staff of inspectors, and subpoena landlord, contractor, and bank records in suspicious cases. There should also be substantial financial penalties for fraudulent applications.

MCI applications should be automatically rejected if any of the following conditions exist:

* A rent reduction order is in place, or a reduction in services complaint is under investigation, at the time of application.
* There are more than two hazardous or immediately hazardous violations per unit, or the landlord has been found guilty of tenant harassment.
* The improvements made can be funded through other government agencies such as HPD or NYSERDA, or the landlord will be able to recapture the cost of the improvements through energy savings that result from the work.

Additionally, two changes made to the RSC regarding MCIs that inappropriately favor landlords must be rescinded:

* In 2000 the DHCR amended the RSC so that an engineer's or architect's affidavit now creates a rebuttable presumption that the work specified in an MCI application has been completed and is in good working order. This rebuttable presumption can only be countered by an independent engineer/architect hired by the tenants or the signatures of 51% of tenants. This provision places an unnecessary burden on tenants seeking to challenge MCI rent increase applications, and should be eliminated.
* For eighteen years up until 2005, the uniform practice under the RSC was to allocate the cost of MCIs between commercial and residential tenants based on the rent roll of the building, a method that accurately reflected the economic realities of the relationship between regulated tenancies and unregulated tenancies in a building. However in 2005, the DHCR amended the RSC to reverse this policy so that the cost is now allocated according to the amount of space occupied by commercial and residential units.

**Individual Apartment Improvements (IAIs)**

Many of the problems in the MCI application system also plague the IAI application system which enables landlords to permanently increase monthly rents by 1/40th or 1/60th the cost of improvements or new services in an individual apartment. However, the IAI application system is even more susceptible to abuse because there is no proactive regulatory oversight or even a requirement for landlords to document expenses. The only oversight of IAIs currently results from tenant-initiated complaints to the DHCR. However, because most IAIs are imposed based upon improvements made while apartments are vacant, this oversight mechanism has been proven structurally inadequate. New tenants are highly unlikely to question the rent they are paying or to investigate the condition of the apartment before they moved in. As a result, IAIs are rarely challenged and provide a mechanism for unscrupulous building owners to illegally increase apartment rents by hundreds or thousands of dollars by exaggerating their renovation costs or even without doing any renovations at all. In fact, a 2009 study conducted by the Association for Housing and Neighborhood and Housing Development concluded that the IAI loophole is one of the central factors in the loss of affordable housing in New York.

In order to curb this abuse, the agency should implement the following regulatory and procedural changes:

* Landlords should be required to provide notices to new tenants detailing the prior legal rent and an explanation of any improvements made while the apartment was vacant. IAI rent increases for work done in vacant apartments that raise the rent more than 20% should require approval from the DHCR.
* Building owners should be required to file documentation with the DHCR explaining the type and costs of all IAIs, and the agency should conduct random audits of these documents.
* IAI applications for cosmetic improvements, and those that result from the prior neglect of apartments should be denied.
* The DHCR should discourage fraud by limiting IAIs to the reasonable, rather than actual, cost of improvements and require landlords to use licensed independent contractors.

**Rent Registrations**

Landlords are required to register all rent regulated units with the DHCR each year; these registrations are supposed to include the rent of every unit and the name of the primary tenant. The information provided through this registration process is essential if and when any disputes emerge regarding the legal status and/or rent of a unit. Unfortunately, changes made to the RSC in 2000 eliminated all meaningful incentives for landlords to comply with the registration requirements and removed all serious sanctions for failure to comply. In order to restore integrity to the rent registration system, the following changes should be made:

* All previous rent registrations with the DHCR should be the basis for rents since they are a matter of public record and relatively easy records for tenants to obtain regardless of when they were filed.
* The RSC should be amended so that a landlord’s failure to register the rent automatically extends period of time when the last valid rent registration can be used as a basis for establishing the tenant’s rent regardless of the four year rule.
* The agency’s database should be programmed to automatically detect possibly illegal rent increases registered by landlords and the failure of landlords to register.
* The DHCR should regularly remind owners of their legal responsibility to register all regulated apartments on a yearly basis. The repeated failure to register should lead to investigations and possible fines.

**The Four Year Rule**

The DHCR should follow the clear legislative intent and the language of the four year look-back rule established in the 1997 Rent Regulation Reform Act (RRRA). The intent of the law was to relieve landlords of the duty to keep records more than four years old. The regulations established to implement this section of the law turned this clear directive on its head and provide far greater protections to landlords than the Legislature intended. The RSC now allows the base rent for rent-stabilized apartments to be whatever the landlord charged four years ago. The DHCR actually created a law that the Legislature did not authorize, which permitted the owner to charge any market rate rent to the subsequent tenant if the apartment was vacant four years ago. In effect, the DHCR created a new form of vacancy decontrol without legislative approval that was nowhere justified in the Rent Stabilization Law or Emergency Tenant Protection Act. The following alterations to the RSC and the agency’s administrative procedures should be made to ensure that they comply with the legislative intent of the RRRA:

* The RSC should be amended to restore the original legislative intent of the statue, which was that the rent should be determined in accordance with the registration documents that are a matter of public record, as long as they remain unchallenged for four years.
* The DHCR's orders or prior rent registration records, no matter how long ago they were issued, should be considered when the agency is determining the legal regulated rent of a unit since they are a matter of public record.

**Enforcement of the *Roberts v. Tishman Speyer* Decision**

The New York State Court of Appeals conclusively ruled more than two years ago in *Roberts v. Tishman Speyer Properties* that all units, regardless of rent, in buildings receiving J-51 tax abatements from New York City must remain rent regulated. The DHCR has failed take any steps to formally reregulate the tens of thousands of illegally deregulated apartments in buildings receiving J-51 benefits, or even to notify tenants in these buildings of their rights and options. Courts have requested that the DHCR create a method of ensuring these units be brought back under rent regulation at the correctly re-calculated monthly rent for their correct status.

The DHCR should immediately develop a method for coordinating its tracking systems with the systems maintained by the NYC Department of Housing, Preservation, and Development and the NYC Department of Finance to identify apartments that were improperly deregulated, notify building owners receiving J-51 abatements that that all these units must remain in or returned to their proper rent regulated, registered status for the duration of the tax benefit, and ensure that applications to deregulate apartments in these buildings are automatically rejected.

**Owner Use Evictions**

The owner use provisions of the rent stabilization laws were established to allow owners or their immediate families to take over rent stabilized apartments when they legitimately intended to use the apartments for their personal use. However, by exploiting a loophole in the current law which uses the term “one or more,” landlords can utilize the “owner use” provision to take over multiple apartments. In one instance, a landlord in my district attempted to empty an entire building (with 15 apartments) to create a single family home of immense proportions. The resulting massive evictions are clearly inconsistent with the intent of the rent regulation laws. Therefore, the DHCR should amend the code to limit the definition of “more” to a definite and reasonable number, such as three apartments in buildings containing twenty or fewer units, with a slightly higher number in larger buildings.

Moreover, there is no reason for the displacement of an existing tenant when a comparable vacant apartment exists that can be used by the owner or a qualifying family member. Owner use evictions should only be permitted when the landlord can prove that a comparable vacant apartment does not exist at the time that notice is sent to the tenant that the lease will not be renewed.

**Preferential Rents**

In 2003, the Legislature changed the rent regulation laws to provide that rents in renewal leases may be based on a “previously established” legal regulated rent, rather than a lower “preferential rent” previously charged to the tenant. Numerous court decisions since then have established that landlords can only “establish” a higher legal regulated rent if that rent was listed together with the preferential rent on all initial and renewal leases.

Despite these court rulings, the DHCR amended the RSC in way that radically loosened the requirements for “establishing” a higher legal registered rent. The new language in the RSC deems the legal regulated rent to be “previously established” when it was set forth, not in a vacancy lease or a renewal lease, but in a registration statement filed prior to June 19, 2003. This provision opened the door to widespread landlord misconduct. Many tenants have learned years later that the landlord had registered their lease rents as “preferential,” although they had never been told their rent was less than the legal maximum. These tenants may have difficulty proving that they did not receive the registrations for those years, or may not have realized that they needed to carefully examine and protest those registrations, when the rent in their lease was not lawful. After four years, these tenants may be precluded from challenging the false registrations, even though the rent registered was purely fictional.

The language of the RSC also allows landlords to omit the legal regulated rent from renewal leases once it has been stated in the initial lease. By not including both the preferential and the legal regulated rent in each lease, tenants are deprived of notice of potential sudden rent increases, and may be lulled into a false sense of security.

The RSC should be amended so that it is consistent with recent court decisions. The RSC should make clear that in order to “establish” a legal regulated rent that is higher than the rent charged, landlords must set forth both the legal regulated rent and the preferential rent must be set forth in all leases and registration statements. The DHCR should also amend the RSC to reflect case law that states that preferential rents are permanent when there is language in a tenant’s lease stating that it is permanent. Finally, landlords must be required to inform tenants that they have four years to challenge the first non-preferential rent.

**Overcharge Complaints**

Ensuring that rent regulated tenants are not improperly charged more than their legal regulated rents is central to the integrity of the rent regulation system, and therefore must become a much higher priority for the DHCR. Many tenant advocacy organizations and attorneys view the agency’s current procedures for processing overcharge complaints as so inefficient and ineffective that they advise tenants to only file complaints with the DHCR as a last option. It is all too common for tenants to have to wait more than three years for the agency make an initial decision, and then many more years if the case is appealed. It is clear that the agency’s current procedures for processing overcharge complaints must be fully evaluated and improved, and that immediate action should be taken to eliminate the extensive existing backlog of cases.

Additionally, the DHCR must move from strictly responding to rent overcharge complaints from individual tenants to proactively and strategically investigating entire buildings (or groups of buildings owned by the same owner) where multiple and/or repeated overcharges are likely taking place. The agency’s database should also be configured to automatically detect possibly illegal rent increases registered by landlords.

**Illegal Vacancy Decontrol**

Between 1994 and 2010, more than 110,000 apartments were registered with the DHCR as deregulated due to high rent vacancy decontrol. Because there are not meaningful penalties for landlords who fail to register when deregulating apartments, many housing experts estimate that the true number of units lost to vacancy decontrol is more than 300,000. According to a 2011 New York City Rent Guidelines Board report, 75% of apartments permanently taken out of rent-stabilization in 2010 in New York City were removed through vacancy decontrol.

While many of these deregulations have taken place in compliance with existing laws, a significant percentage of units have been deregulated illegally. Vacancy decontrol, with its potential financial windfall provides landlords with a compelling incentive to vacate rent-regulated apartments. Vacancy decontrol applications should be carefully examined and analyzed by the DHCR and not simply rubber stamped. Owners who are found to have provided false documents and deregulated apartments illegally should face high financial penalties and be forced to re-regulate the apartments.

For landlords to remove their vacated, rent-regulated units from rent regulation, in addition to getting vacancy increases, owners must often make significant improvements to the apartments. Once enough improvements have been made to allow the rent to reach $2,500 or more per month, the apartments can be permanently removed from regulation. Under current law, landlords do not need to obtain approval of the DHCR for individual apartment improvements or provide documentation to prove work was actually completed.

Vacancy decontrol gives landlords an extremely compelling financial incentive to vacate their rent-regulated apartments. This has led to growing problems with tenant harassment and the faulty use of MCIs and IAIs to raise the rent to $2,500. With more than twice as many units being removed from rent stabilization status as new affordable units are being created, vacancy decontrol is dramatically increasing New York’s housing crisis.

The following procedural and regulatory changes would significantly reduce to the frequency of illegal vacancy deregulation:

* Significant penalties should be established and enforced against owners who illegally decontrol units based upon fraudulent claims.
* The RSC should be amended so that owners must apply to the DHCR for permission to deregulate units based upon vacancy decontrol; all units should remain regulated until permission has been granted.
* Random audits of applications for vacancy decontrol should be conducted, and the agency should utilize its subpoena powers when necessary to fully evaluate questionable cases.
* Owners must be required to provide the first non-regulated tenants of decontrolled units written notices explaining that apartments were recently deregulated and the current tenants have the right to appeal the decision to the DHCR.
* The four year rule should apply equally to tenants and landlords. If the owner fails to apply for deregulation with four years after the prior stabilized rent registration the owner should lose the right to apply.

**Rent Restorations**

In 2000, the DHCR changed the RSC to create a rebuttable presumption that a service has been restored and is in good working order when an owner submits an engineer's or architect's affidavit stating that this is the case. This created a significant burden for tenants who can now onlyrefute this presumption by hiring an independent engineer/architect or by collecting the signatures of 51% of tenants. All too often, this has led tenants to abandon well-founded cases simply because they do not have the financial resources necessary to hire a licensed architect or engineer or the time needed to collect signatures from 51% of their neighbors. In addition, the agency should not grant landlords’ applications for Rent Restoration Orders while hazardous or immediately hazardous violations placed by other enforcement agencies that are the subject of the rent reduction remain. The existence of the violation should be adequate proof that the reduction in service remains.

**Phony Demolitions**

The demolition provision of the state’s rent regulation laws was intended to permit owners to remove regulated tenants living in dilapidated buildings that will be fully demolished and replaced with new safe housing. In recent years, there have been numerous instances of ill-intentioned landlords filing “phony demolition” applications for structurally sound buildings where it is evident that the owners simply plan to renovate the property and convert rent-regulated apartments into luxury housing or other uses. In fact, before the recession led to the downturn in the New York City real estate market, phony demolitions were so frequent that a coalition of more than a dozen New York City and State elected officials came together with housing advocacy groups specifically to attempt to deal with the skyrocketing number of cases.

After many months of discussions about how to ensure that the original intent of the demolition sections of the rent regulation law are followed, the coalition determined that the following changes should be made to the DHCR’s procedures and the RSC:

* When an owner *submits* a demolition application, he/she must also be required to submit approved building plans and proof of financial ability to demolish the existing building and construct a new one. All too often, owners have used a demolition application as a means to threaten tenants who have limited legal sophistication, without intending or having the financial ability to do the work. Requiring these items at the point of application will help prevent landlords from using the application as a harassment tool.
* For a demolition application to be approved, the owner must propose to raze the entire building to the ground. Before 2000, the RSC required the owner to establish that he/she “seeks in good faith to recover possession of the housing accommodations for the purpose of demolishing them *and constructing a new building*.” The DHCR should eliminate the ambiguity that was added in 2000, and clarify that the entire building, including its exterior walls, must be razed to the ground.
* In keeping with the original intent of the demolition provision in the RSL, the owner should be required to prove that the building being considered for demolition is unsafe.
* The DHCR should restore tenants’ right to a hearing, as was in place before 2002. Considering that people’s homes are at stake, the DHCR cannot solely rely on a paper application to scrutinize an owner’s intentions. A hearing would also provide tenants the opportunity to disclose relevant information, such as if the owner had harassed tenants in the building to force them from their apartments.
* If a tenant or the DHCR’s enforcement unit establishes at a hearing that the owner has harassed tenants in order to force them from their units, then the owner’s application should be denied.
* Discovery should be permitted in demolition proceedings as in other administrative proceedings.

In addition, if an owner’s application is approved and residents are evicted, the RSC currently only requires the landlord to provide the rent regulated tenants with minimal compensation. The stipend chart used to determine how much tenants will receive is based on outdated statistics, and does not provide tenants with the means to rent an apartment in New York City. While owners reap large profits from evicting tenants from their homes, tenants are potentially forced into financial hardship or homelessness. If an owner’s application is approved, the owner should either relocate the tenants to comparable units within the same Community Board (or zip code outside of NYC) at the same or lower rent. If a comparable apartment is not available, the owner should be required to pay the difference between the tenant’s old rent and the cost of renting a new comparable apartment for as long as the tenant remains in the new apartment.

**Enforcement of the Anti-Harassment Laws**

Tenant harassment continues to be a frequent and steadily growing problem. My staff and I, as well as housing organizations and attorneys across New York, regularly receive complaints of harassment. The forms of harassment include everything from from landlords refusing to provide basic services, to arbitrarily calling Child or Adult Protective Services to cause emotional trauma for tenants, to bringing repeated frivolous lawsuits against tenants.

The DHCR’s current processes for handling harassment complaints are widely viewed as highly ineffective and appear to almost never lead to findings of harassment. For example, records the DHCR shared with my office in 2008 revealed that between June 2003 and September 2007 almost no cases were brought before an Administrative Law Judge (ALJ), and the agency only made a final finding of harassment in 9 out of 1,517 cases. The agency’s current system for handling harassment complaints is clearly geared toward fostering settlements and agreements between tenants and landlords. While it is important to attempt to find reasonable solutions to individual cases when possible, this is not appropriate in all cases.

In order to stop the widespread practice of harassment, the DHCR must create procedures and penalties that act as true deterrents. These changes should include reforms of the agency’s processes of harassment cases, and a clear and useful definition of harassment with meaningful and strict penalties that are actually enforced.

The following reforms to the processing of harassment cases are recommended:

* The DHCR must prioritize and expedite cases that significantly affect the tenant’s use of the apartment and/or the tenant’s health and safety. For example, cases which involve the continuous disruption of heat or hot water, threats of physical violence or eviction, or repeated instances of other forms of harassment should immediately be referred for investigative conferences and possible hearings before an ALJ if appropriate. The agency should also ensure that decisions are reached within a defined and expeditious timeframe.
* Harassment complaints should be carefully tracked by building and landlord, and this data should be used to expedite cases involving multiple accusations against the same landlord.
* An appeals process must be implemented to permit tenants to request a hearing even if the DHCR does not recommend one after the investigative conference.
* Once the case has reached the hearing phase, a fine should be mandatory if the landlord is found guilty, and fines should be imposed for every individual act of harassment.
* The current provision that prohibits owners from collecting rent increases until there is a finding that the harassment has ended must be more strictly enforced. Landlords must not financially benefit from a delayed harassment finding.
* The threshold for lifting a harassment finding should be higher, requiring that the owner obtain tenant signatures or that the DHCR verifies with tenants that harassment has ceased. Additionally, harassment findings must also not be lifted simply because a tenant has moved out. Lifting the DHCR finding is counterintuitive, as it essentially rewards landlords for successfully harassing tenants out of their homes.
* Tenants are harassed in many ways, including ones that are not captured on the DHCR’s harassment form. Tenants, therefore, should be clear that they may report incidents and behaviors that they believe constitute harassment, even if they are not specifically stated on the DHCR form.
* Given that other agencies, particularly New York City’s Housing Court and Departments of Housing Preservation and Development and Buildings, already investigate and track certain kinds of complaints which may be part of a pattern of harassment, DHCR should utilize these resources to gather proof of landlords’ negligent behavior. As part of its information gathering, the DHCR should look at whether HPD or DOB violations have been issued for a particular building or owner and whether those violations have been resolved.

The narrowness of the DHCR’s current definition of harassment excludes many actions which ought to be deemed harassment. In particular, the “course of conduct” requirement may result in a finding from the DHCR that just one or two egregious acts of harassment by an owner, even if they include threatening a tenant with a baseball bat or setting off a bomb in a building’s basement to scare tenants, do not fall within the DHCR’s definition of harassment. In order to truly capture the breadth of actions that may constitute harassment, the DHCR should adopt a definition of harassment that mirrors the definition used in New York City’s Tenant Protection Act implemented in 2008. New York City law defines harassment in the following manner:

# Except where otherwise provided, the term "harassment" shall mean any act or omission by or on behalf of an owner that (i) causes or is intended to cause any person lawfully entitled to occupancy of a dwelling unit to vacate such dwelling unit or to surrender or waive any rights in relation to such occupancy, and (ii) includes one or more of the following:

# a. using force against, or making express or implied threats that force will be used against, any person lawfully entitled to occupancy of such dwelling unit;

# b. repeated interruptions or discontinuances of essential services, or an interruption or discontinuance of an essential service for an extended duration or of such significance as to substantially impair the habitability of such dwelling unit;

# c. commencing repeated baseless or frivolous court proceedings against any person lawfully entitled to occupancy of such dwelling unit;

# d. removing the possessions of any person lawfully entitled to occupancy of such dwelling unit;

# e. removing the door at the entrance to an occupied dwelling unit; removing, plugging or otherwise rendering the lock on such entrance door inoperable; or changing the lock on such entrance door without supplying a key to the new lock to the persons lawfully entitled to occupancy of such dwelling unit; or

# f. repeatedly causing or permitting other acts or omissions which substantially interfere with or disturb or is intended to interfere with or disturb the comfort, repose, peace or quiet of any person lawfully entitled to occupancy of such dwelling unit.