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TESTIMONY OF STATE SENATOR BRAD HOYLMAN BEFORE THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL ON PROPOSED AMENDMENTS TO THE RENT REGULATIONS

JUNE 10, 2013

Thank you and Commissioner Towns for the opportunity to present testimony regarding the proposed amendments to the Rent Stabilization Code, the Tenant Protection Regulations and the State and New York City Rent Control Regulations, (collectively, the "rent regulations"). I represent New York State's 27th Senate District, which includes the neighborhoods of Clinton/Hell's Kitchen, Chelsea, Greenwich Village and parts of the Upper West Side, Midtown/East Midtown, the East Village and Lower East Side. This mixed-income district is composed largely of tenants, thousands of them rent-stabilized or rent controlled, which makes these proposed rent regulations crucial to my district.

I would like to commend the New York State Division of Housing and Community Renewal ("DHCR") for its efforts in crafting these regulatory amendments. Should these proposed regulations be adopted, they would assist in the enforcement of our rent laws, provide tenants with vital information and help protect tenants from unscrupulous landlords. While I firmly believe that much more needs to be done to ensure all tenants have access to safe, affordable housing, and to combat landlord fraud and misconduct, the proposed amendments are a welcome improvement to the rent regulations.

Ensuring the existence of viable housing options for all New Yorkers, including those with low and moderate incomes, is a proven way to keep our neighborhoods diverse, dynamic and vibrant. The rent regulations are an invaluable tool to preserve and protect our City's middle class, and I

believe that there is a link between the city's surging homeless population and the weakening of the rent laws.

Too many tenants struggle to combat dishonest landlords, and are deterred and overwhelmed by their landlords' vast advantage in resources, leaving many vulnerable citizens without protection. Many of our tenant protection laws are explicitly designed to help level this playing field, and I am hopeful that the formal incorporation of the Tenant Protection Unit ("TPU"), while severely underfunded in this year's state budget, will eventually assist in identifying and combating violations of the rent regulations on behalf of tenants.[1]

The proposed expanded protections for tenants who participate in the Senior Citizen Rent Increase Exemption and Disability Rent Increase Exemption programs ("SCRIE" and "DRIE," respectively) would help protect some of our city's most vulnerable tenants from harassment and unaffordable utility charges. Some landlords, hoping their tenants will incorrectly or fail to complete the Income Certification Forms, which are used against tenants in High Income Deregulation proceedings, routinely send these forms to elderly and vulnerable tenants. Exempting from this process SCIRE and DRIE participants, who by definition are low-income tenants, would help end to this potential method of harassment.[2] Additionally, expanding the protections from submetering that currently exist for SCRIE tenants to DRIE tenants, many of whom are similarly on fixed incomes, would align the treatment of the programs under the rent regulations and stop tenants from being charged for utilities they cannot afford. [3]

The proposed regulations also include important amendments to expand the transparency of legal rents for new tenants, helping to combat rent fraud. The proposed Notice of Deregulation would require a landlord to notify a tenant of a newly-deregulated apartment exactly how the qualifying rent was calculated.[4] The clarified vacancy lease rider provision would require owners to provide

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[1] Section 2520.5(o)

[2] Section 2531.2

[3] Section 2502.16(e)(3)

[4] Section 2520.11(u)

new tenants with a "detailed description" of the vacancy increase calculation "in a format prescribed by DHCR" as well as to provide supporting documentation to tenants upon request. However, there must be an assurance, through DHCR oversight, that landlords have sent the Notice of Deregulation to new tenants and the format must have a clear breakdown of the modifications that constitute any Individual Apartment Improvement increase ("IAI"). Further, I believe that IAIs should only be granted for substantial improvements to the services in an apartment, and not for solely cosmetic projects.

I appreciate DHCR's effort to lower the threshold for the imposition of a penalty on landlords who fail to provide the aforementioned vacancy lease rider. [5] However, by continuing to allow increases that are otherwise proven legal, the code still encourages landlords not to provide this rider. The language should be revised to remove the exemption from the penalty and thus forcefully incentivize landlords to provide this rider. Overall, when followed, both the Notice of Deregulation and vacancy lease rider provisions would help tenants to identify improperly deregulated apartments and illegally high rents, and give them information with which to start the challenge process – a marked improvement on the current system.

According to DHCR's Consolidated Regulatory Impact Statement Summary for Amendments to the Rent Stabilization Code, close to 25% of registered rents in New York City are preferential rents. The proposed regulations would augment record-keeping and important disclosure requirements for landlords. The proposed regulations would codify the prohibition on landlords claiming a higher legal rent than the rent charged, unless explicitly stated in a tenant's lease.[6] This important provision would help combat sudden increases in a tenant's rent, particularly when the rent is under review.

It's a depressing reality, but harassment of regulated tenants is an everyday occurrence throughout my district. The proposed regulations would expand the current definition of harassment to include the filing of false documentation as well as conduct, such as intimidation,

[5] Section 2522.5(c)(1)

[6] Section 2521.2

that interferes with tenants' exercise of their rights under rent regulation.[7] Proving harassment would still demand an extremely high evidentiary burden that is out a reach for tenants in need of assistance. However, I am hopeful that even this limited expansion of the definition of harassment would discourage some of the intimidation and lawless tactics that many tenants face.

The proposed regulations include new restrictions against certain Major Capital Improvement rent increases ("MCIs"). MCIs are a burden on tenants, who are forced to pay for improvements that landlords make to their property in perpetuity. The costs associated with installing a submetering system, which turns over responsibility for electricity costs from a landlord to individual tenants, would no longer be eligible for an MCI.[8] This would be a welcome change, as the existing regulations reward landlords for shifting electricity costs to tenants by making tenants pay for the privilege. Further, the proposed regulations also include new prohibitions on MCIs in buildings with one or more immediately hazardous violations.[9] I am pleased to see that DHCR shares my belief that tenants should not be faced with permanent, mid-lease rent increases while suffering from hazardous living conditions. However, as with IAIs, I believe that MCIs should only be granted for projects that improve the services for tenants, and not for cosmetic projects.

DHCR's strict four year limitation for review of rent overcharge claims, known as the four year look-back rule, denies tenants the ability to challenge many unlawful increases, and enriches landlords who have broken the rules. This limitation legitimizes willful rent overcharges, incorrect vacancy increases, and illegally deregulated units simply due to the passage of time. I should note that currently, landlords have no such look back limitation, and are allowed to collect previously missed increases from more than four years ago. I strongly believe that the look-back rule should be eliminated, allowing the agency to verify the correct legal rent for a unit based on the full history of an apartment. However, until that occurs, the proposed

[7] Section 2525.5

[8] Section 2522.4(a)

[9] Section 2522.4(a)(13)

regulations, which codify certain exceptions to the rule, would assist tenants in challenging long-standing illegal rents in this unfair system.[10] It is particularly vital that for units that have been vacant for more than four years, DHCR allow new tenants to challenge the deregulated status. Without this change, owners who remove their units from the system for a use contrary to the current Certificate of Occupancy and the rent regulations, such as a Transient Occupancy Unit, colloquially known as an illegal hotel, would be rewarded for the time the unit was out of residential service, and new tenants would be denied the opportunity to challenge the deregulation. Further, the rent freeze imposed on landlords as a penalty for failing to submit registrations must be extended to the last known legal rent, even if that rent is outside of the four year look-back period.[11]

I also encourage DHCR to consider several important changes that go beyond the proposed amendments to the rent regulations. Current DHCR policy with respect to rent reductions for regulated tenants who have experienced a diminution of services in their apartment or building is incompatible with the Rent Stabilization Code and runs the risk of denying tenants compensation to which they are otherwise entitled.[12] The latter provides that "the DHCR shall so reduce the rent for the period for which it is found that the owner has failed to maintain required services." Contradicting its own code, DHCR's "Fact Sheet 14" states that "The effective date for rent stabilized tenants is retroactive back to the first day of the month following DHCR's service of the complaint on the owner. For rent controlled tenants, the effective date is the first day of the month after the order is issued." However, if tenants are denied their contractually obligated services, their remedy should not be limited to the period after DHCR has had time to serve notice on the owner, as stated in the above referenced section. DHCR should align these regulations with the Rent Stabilization Code to make clear that in cases of diminution of services, rent reductions must be issued for the entire period of diminished services.

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[10] Section 2526.1(a)

[11] Section 2528.4(a)

[12] 2523.4(a)(1)

Additionally, DHCR should take proactive action to re-regulate all of the illegally deregulated apartments in buildings that have received J-51 tax abatements, as a result of the *Roberts v. Tishman Speyer* (2009) court decision, including tenant notification. Tens of thousands of apartments that were illegally deregulated have not been brought back into the system, leaving current and former tenants without important protections and unlawfully high rents.

Finally, DHCR should clarify that for purposes of succession, the date that a primary tenant permanently vacates an apartment shall be considered to be the first date he or she establishes a primary residence elsewhere, regardless if they continue to sign a renewal lease or temporarily visit the unit, instead of the date the primary tenant formally surrenders his or her tenancy rights. As you know, a family member must have resided in an apartment as a primary residence for the two years immediately prior to the permanent vacating of the tenant to have succession rights. This change would prevent family members who have legitimate succession claims from being denied should they delay in asserting their right to the apartment.

Again, I would like to express my appreciation for the thoughtful proposals DHCR has put forward. I believe these proposed regulatory amendments would help strengthen the enforcement of our rent regulations and assist in protecting tenants. Thank you for your consideration of my remarks, and your continued efforts on behalf of New York's tenants.