

Demolition Non-Renewal – Fair or Foul?

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Rent stabilized buildings traditionally have not been a target for developers. In order to vacate buildings, developers typically pay exorbitant amounts of money to current tenants, sometimes five, or in some cases, even seven-figure buyouts. Section 9 NYCRR § 2524.5 of the Rent Stabilization Code has changed that. Although not well-known by most developers or tenants, this section has significant implications on both parties, and has shifted the advantage from the rent-stabilized tenant to the developer in a buyout scenario.

A traditional buyout scenario involves two issues – the date that the tenant will move out, and the sum that the landlord will pay the tenant. The mechanics are simple. A surrender agreement is drawn up and executed by both parties outlining the particulars of the exchange. When the tenant moves out, they sign a release and exchange the keys for the agreed buyout sum.

Under the current law, there are no substantive issues that need to be negotiated between the landlord and tenant. This code section allows a property owner to not renew the lease of a rent stabilized tenant on the grounds that they intend on demolishing the building. The owner must first get permission from the DHCR (Division of Housing and Community Renewal) before commencing a legal proceeding to recover the unit. As part of the application, the property owner must include the approved plans for any future development, and proof of their financial ability to complete the project. If the DHCR determines that the owner's has merit, they will then grant an order allowing the applicant permission to initiate a legal proceeding to recover possession of the unit. The order will be conditioned on the landlord giving the tenant reasonable time to move and paying the tenant's reasonable moving expenses.

Once the order has been granted, the landlord must then choose one of three options for the tenant's relocation and stipend as outlined by the DHCR, through an Operational Bulletin:

Option 1: If the owner relocates the tenant to a suitable housing accommodation at the same or lower regulated rent in close proximity, or in a new residential building constructed on the site, the owner must pay a \$5,000 stipend to the tenant in addition to reasonable moving expenses.

Option 2: If the owner relocates the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, the owner must pay the tenant a stipend equal to the difference between the rent in the relocated accommodation and their prior rent, multiplied by 72 month (6 years), in addition to reasonable moving expenses. For example, if the tenant's current rent is \$1,000 a month and the landlord finds the tenant an apartment for \$1,200, he/she would have to pay the tenant's reasonable moving expenses plus \$14,000 (monthly rental differences x 72month).

Option 3: The owner has the option of paying the tenant a stipend equal to the difference between the tenant's current rent and an amount to be calculated by using the demolition stipend chart, per room per month, multiplied by the actual number of rooms in the tenant housing accommodation, not no less than three rooms. This difference is to be multiplied by 72 months (6 years). The current rate in Manhattan per room per month is \$356.16. Under this option, if the tenant's current rent is \$1,000 a month and the tenant

lives in a three room apartment, the Landlord would owe the tenant \$6,874.56 ($\$365.16 \text{ per month} \times 3 \text{ rooms} = \$1,095.48 - \$1,000.00 = \95.48×72).

These buyout formulas, similar to Rent Guidelines Board Orders for rent increase, produce more reasonable buyout levels, and as a consequence, developers have started to rely on this code section in order to vacate their buildings and when performing their due diligence for new acquisitions.

The most damaging impact of the new law is the psychological effect it has on the rent stabilized tenant who knows the landlord will most likely prevail because the law is on their side. The specter of eviction hangs like Damocles' Sword over the tenant's head throughout the process. Most litigators will tell you that when the law is against you, you argue the facts. However, under these circumstances, what real incentive is there for a rent stabilized tenant of limited funds to spend time and money to pursue a Petition for Administrative Review (PAR) with the DHCR, or to further appeal the DHCR's decision in Civil Court in an Article 78 Proceeding?

The most likely scenario is that owners will use the law as a tool to soften up a rent stabilized tenant in order to negotiate a more traditional and faster buyout. This is especially true where the building also contains any of the exceptions to this rule: those considered disabled; any tenant that is a senior citizen or whose spouse as a senior citizen (§ 2524.4 of the RSC); rent controlled tenants; and free market tenants. The owner would most likely approach the tenant and offer whatever the potential cost of eviction under the new law would be, including reasonable attorneys' fees, in exchange for getting immediate vacancy. This would be the best offer the tenant would get, diminishing every day thereafter.

Tenant's rights advocates will say that any future development benefit in the city is outweighed by the continued erosion of the rights of rent stabilized tenants. They see this law as the natural extension of the Code Section that allows a property owner to not renew the lease of a rent stabilized tenant for intended owner occupancy. Is it the city's way to encourage further residential development, or is it one more example of a continuing trend in the weakening of a tenant's bundle of stabilization rights? Whose interests are truly being served? Will the development market cool before this issue has time to ripen and come to center stage? Regardless of what the future holds, there is no doubt this code section is currently creating new opportunities for developers in a market fueled by a combination of a high sell-out prices, relatively cheap financing options and limited inventory.

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