

**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL HOUSING AND
BUILDINGS COMMITTEE HEARING ON INTRO 291A**

March 2, 2011

This testimony is submitted on behalf of Legal Services NYC. Legal Services NYC and Bedford-Stuyvesant Community Legal Services thank the City Council for holding this hearing and for the leadership of the City Council and the Public Advocate in continuing to address important issues of housing code enforcement. On February 8, 2011, we strongly urged the Council to pass Intro 291, which would have amended the Administrative Code to punish repeat offenders of the requirement to provide adequate heat and hot water to residential tenants in New York City. However, today we oppose passage of Intro 291A, a diluted and delayed version of Intro 291.

Legal Services NYC is the nation's largest provider of free legal services to the poor. For nearly 40 years, Legal Services NYC has provided critical legal help to low-income residents of New York City. The eighteen neighborhood offices of Legal Services NYC operate in diverse communities throughout the city, representing thousands of low-income tenants annually in disputes involving their rights to remain in their homes, including their right to decent housing conditions.

Bedford-Stuyvesant Community Legal Services ("BSCLS"), a constituent corporation of Legal Services NYC, is a legal services provider with deep roots in the culturally diverse and low-income

communities that encompass the neighborhoods of central Brooklyn. BSCLS provides critical legal services to individuals on a wide range of matters and engages in community education projects to educate and inform residents of central Brooklyn of their legal rights.

The housing practice of BSCLS represents and advises hundreds of tenants yearly on their rights as tenants, including their rights to safe, healthy, and habitable apartments. Central to safe, healthy and habitable apartments is the provision by landlords of adequate heat and hot water to tenants and their families. Indeed, adequate heat and hot water are fundamental to decent housing in a civilized society such as ours, and the absence of these services represents the denial of basic human dignity to New York City residents.

As we testified with respect to Intro 291 (our February 8 testimony is attached), many landlords in central Brooklyn, as well as throughout New York City, are failing to maintain adequate heat and hot water for their tenants. According to the Department of Housing Preservation and Development (“HPD”), between July 2009 and June 2010 there were 4,325 heat and hot water complaints in the Flatbush section of Brooklyn alone. To put this in human terms, 4,325 families were deprived of the basic services of heat and hot water in just one area of Brooklyn. Undoubtedly, thousands of other families suffer daily without heat and hot water throughout Brooklyn, and many thousands more suffer without these essential services throughout New York City.

More troubling is the disregard by many Brooklyn landlords of the existing code enforcement mechanisms. In a list published just last week by HPD of the 200 buildings in its Alternative Enforcement Program, which comprises the most distressed buildings in the City, 99 of the buildings are located in Brooklyn. Fortunately, the Alternative Enforcement Program was created by law passed by the City Council in 2007 with the aim of increasing pressure on landlords to comply with housing codes. But more needs to be done.

What is needed is more enforcement of tenants’ fundamental rights to heat and hot water, effective immediately, and stricter penalties for lack of compliance. The Heat Enforcement for All

Tenants (HEAT) Act (Intro. 291) proposed to amend §27-2115 of the NYC Administrative Code so that repeat offenders of the requirement to provide adequate heat and hot water to tenants would no longer have their fines reset. After the first violation, landlords would continue to pay escalated fines for a full two years. However, the amended bill, Intro 291A (which if passed will not take effect until October 1, 2011), creates additional mitigation factors for landlords who fail to follow the law, mitigation factors that, if enacted, would likely render the law ineffective as a code enforcement tool. Specifically, proposed §27-2115 (3) (v)) allows landlords to contest subsequent violations by arguing that initial violations were corrected, supported by documentation of “prompt and diligent efforts.” This mitigation language defies logic: if the original violation were corrected, why would a subsequent violation be entered? In fact, Intro 291A creates a means for landlords to generate mitigation *post hoc*. In other words, landlords would be able to generate documentation of their “prompt and diligent efforts” in each and every case where Intro 291 would have applied.

In addition, proposed §27-2115 (3) (ii) would allow landlords to claim “...that he or she began to correct the condition which constitutes the violation promptly upon discovering it but that full correction could not be completed expeditiously because of technical difficulties, inability to obtain necessary materials, funds or labor, or inability to gain access to the dwelling unit wherein the violation occurs, or such other portion of the building as might be necessary to make the repair.” This section undermines the purpose of the Housing Maintenance Code, which requires landlords to “find the necessary materials, funds or labor” to correct immediately hazardous violations that by their very nature threaten the life, health and safety of New York City tenants. Moreover, the term “technical difficulties” has no legal definition and creates a loophole that would allow landlords, by making token efforts to fix the problem and then claiming “technical difficulties” prevented them from completing the work, to easily avoid the escalated fines they should pay as an appropriate penalty for their failure to cure the violation.

Conclusion

Legal Services NYC and Bedford-Stuyvesant Community Legal Services thank the City Council Housing and Buildings Committee for holding this hearing and urge the full City Council to pass Intro 291 as it was introduced and discussed on February 8, 2011, and to reject Intro 291A.

Respectfully submitted,

Sateesh Nori, Esq.
Director of Housing Litigation
Bedford-Stuyvesant Community Legal Services
1360 Fulton Street, Suite 301
Brooklyn, NY 11216
(718) 233-6426

David Robinson, Esq.
Legal Services NYC
Legal Support Unit
40 Worth Street, Suite 606
New York, NY 10013
(646) 442-3596



**TESTIMONY BEFORE THE NEW YORK CITY COUNCIL HOUSING AND
BUILDINGS COMMITTEE HEARING ON INTRO 291**

FEBRUARY 8, 2011

This testimony is submitted on behalf of Legal Services NYC. Legal Services NYC thanks the City Council for holding this hearing and for the leadership of the City Council and the Public Advocate in continuing to address important issues of housing code enforcement. We strongly urge the Council to pass Intro 291, which would amend the Administrative Code to punish repeat offenders of the requirement to provide adequate heat and hot water to residential tenants in New York City.

Legal Services NYC is the nation's largest provider of free legal services to the poor. For nearly 40 years, Legal Services NYC has provided critical legal help to low-income residents of New York City. The eighteen neighborhood offices of Legal Services NYC operate in diverse communities throughout the city, representing thousands of low-income tenants annually in disputes involving their rights to remain in their homes, including their right to decent housing conditions.

Bedford-Stuyvesant Community Legal Services ("BSCLS"), a program of Legal Services NYC, is a legal services provider with deep roots in the culturally diverse and low-income communities that encompass the neighborhoods of central Brooklyn. BSCLS provides critical legal services to

Legal Services NYC
350 Broadway, 6th Floor, New York, NY 10013
Phone: 646-442-3600 Fax: 646-442-3601 www.LegalServicesNYC.org
Michael D. Young, Esq., Interim Executive Director
Mark G. Cunha, Board Chair



individuals on a wide range of matters and engages in community education projects to educate and inform residents of central Brooklyn of their legal rights.

The housing practice of BSCLS represents and advises hundreds of tenants yearly on their rights as tenants, including their rights to safe, healthy, and habitable apartments. Central to safe, healthy and habitable apartments is the provision by landlords of adequate heat and hot water to tenants and their families. Indeed, adequate heat and hot water are fundamental to decent housing in a civilized society such as ours, and the absence of these services represents the denial of basic human dignity to New York City residents.

Unfortunately, many landlords in central Brooklyn, as well as throughout New York City, are failing to maintain adequate heat and hot water for their tenants. According to the Department of Housing Preservation and Development (“HPD”), between July 2009 and June 2010 there were 4,325 heat and hot water complaints in the Flatbush section of Brooklyn alone. To put this in human terms, 4,325 families were deprived of the basic services of heat and hot water in just one area of Brooklyn. Undoubtedly, thousands of other families suffer daily without heat and hot water throughout Brooklyn, and many thousands more suffer without these essential services throughout New York City.

More troubling is the disregard by many Brooklyn landlords of the existing code enforcement mechanisms. In a list published just last week by HPD of the 200 buildings in its Alternative Enforcement Program, which comprises the most distressed buildings in the City, 99 of the buildings are located in Brooklyn. Fortunately, the Alternative Enforcement Program was created by law passed by the City Council in 2007 with the aim of increasing pressure on landlords to comply with housing codes. But more needs to be done.

BSCLS is presently representing tenants and their families who have been denied heat and hot water during this brutal winter season. In one recent case, a family in Bushwick was forced to rely on heat from the burners on their stove to heat their apartment because their landlord had ignored their pleas for adequate heat. This practice, which is unfortunately quite common among tenants in our City,

presents a dangerous fire hazard to the entire building because the open flames are left burning overnight. This family had repeatedly called 311, the City's general complaint telephone number, but to no avail. BSCLS had also obtained court orders in housing court to get the landlord to provide heat, but this method is time-consuming and proved frustrating for our client, who had to take days off from work to attend numerous court hearings.

Legal Services NYC strongly believes that strict enforcement of the housing maintenance code, buttressed by stiffer penalties for landlords' failure to comply with the law, such as the accruing penalties proposed by Intro 291, would help protect thousands of families who are being denied the basic human right of living in homes with heat and hot water in New York City. Under current law, landlords can be fined up to \$500 per day for the first heat and hot water violation. For subsequent violations within the same calendar year, penalties range from \$500 - \$1,000 per day. Fines are then reset to the lower levels at the beginning of each calendar year. The Heat Enforcement for All Tenants (HEAT) Act (Intro. 291) amends §27-2115 of the NYC Administrative Code so that repeat offenders would no longer have their fines reset. After the first violation, landlords would continue to pay escalated fines for a full two years. This change in the law would provide an important incentive for landlords to provide adequate heat and hot water to their tenants and to make lasting improvements to their heating systems, rather than providing temporary solutions to ongoing problems. At the same time, the bill would generate additional revenue for the City at a time of fiscal austerity.

The Public Advocate and City Council Members are recommending a targeted solution to the problem of repeat violators of the requirement to provide adequate heat and hot water. By maintaining the penalties for initial and subsequent violations at the same level, Intro 291 ensures that only the longer term and continuous violators are negatively affected.

Conclusion

Legal Services NYC thanks the City Council Housing and Buildings Committee for holding this hearing and urges the full City Council to pass Intro 291.

Respectfully submitted,

Sateesh Nori, Esq.
Director of Housing Litigation
Bedford-Stuyvesant Community Legal Services
1360 Fulton Street, Suite 301
Brooklyn, NY 11216
(718) 233-6426

David Robinson, Esq.
Legal Services NYC
Legal Support Unit
350 Broadway, 6th Floor
New York, NY 10013
(646) 442-3596