

Testimony of the Department of Housing Preservation and Development to the New York City Council Committee on Housing and Buildings and the Committee on Aging

Hearing: Int. No. 129- In relation to remedies for breach of the duty of an owner to refrain from harassment of tenants

Wednesday, April 30th, 2014

Good morning Chairman Williams, Chairwoman Chin and members of the Committees. My name is AnnMarie Santiago and I am HPD's Associate Commissioner for Enforcement and Neighborhood Services. I am joined by our Assistant Commissioner for Housing Litigation, Deborah Rand. We appreciate the opportunity to testify on Council Bill 129 related to penalties and reporting of cases of tenant harassment.

I will offer some suggestions for the Council's consideration to improve the bill and make it easier to implement, but first would like to explain some of our Department's work to protect tenants from harassment.

In 2007, the City Council passed the Tenant Harassment Legislation, which was codified in the Housing Maintenance Code, creating an option for tenants to bring a claim for harassment against property owners in Housing Court. Some of the actions that qualify as harassment under this legislation include using force or making threats against a lawful occupant, repeated or prolonged interruptions of essential services, using frivolous court proceedings to disrupt a tenant's life or force an eviction, removing the possessions of a lawful occupant, or any other acts designed to disturb a lawful occupant's residence. HPD worked very closely with the City Council and tenant advocates on crafting this legislation. This is one of many instances where HPD has collaborated with the Council and with tenants and their representatives to ensure the preservation of the city's affordable housing stock.

It is important to note that tenants, and not HPD, initiate tenant harassment cases in Housing Court. HPD's Housing Litigation Division also does not conduct independent investigations related to harassment in connection with Housing Court cases. HPD generally does not take any position in such cases where the claims do not also involve physical conditions. HPD may seek to settle the matters; however, when they are disputed, the cases are generally referred to the Court and handled by the judge or the judge's Court Attorney. When HPD participates in trials where there are no outstanding violations, the HLD attorney may seek to elicit the facts from witnesses to aid the Court in making its determination. In cases where there are violations, HPD

seeks correction of those violations. Civil penalties, when sought in connection with harassment, may be sought by the tenant, but are awarded to HPD on behalf of the City.

Since the harassment law was passed, HPD's Litigation Management System records indicate that 3206 cases claiming harassment have been initiated. Of the 3206 cases, the majority of the cases (2195) are discontinued, dismissed or withdrawn. 608 cases were settled. It is unlikely that a property owner will settle if the settlement includes admitting harassment, so we are not reviewing those for a finding. Only 44 cases have a disposition in our database that indicates that there may be a finding by the judge about harassment. The other cases were resolved in a variety of ways. In order to determine whether there is such a finding or a civil penalty related specifically to the finding of harassment, HLD staff will have to manually review the Court On a cursory review, we reviewed 32 cases which were initiated since 2012 in preparation for this hearing and found that all but 3 of the cases were initiated against owners of properties with 4 or fewer units. Those 32 were initiated in the following boroughs: 23 in Queens, 6 in Brooklyn and 3 in the Bronx. Findings of harassment were generally made only after a default by the property owner, meaning that the property owner failed to appear in court. Although we do not oppose the section of the bill increasing civil penalties, we would advise the Council that in our experience judges are less likely to impose these higher civil penalties, especially on landlords of small buildings.

Overall, HPD supports measures that protect the rights of tenants to live safely and peacefully in their homes. We would offer the following suggestions to improve the legislation and reduce some administrative hurdles.

The second section of the bill requires HPD to post information on our website related to findings of tenant harassment. HPD already provides important information about litigation on our website. From our website anyone can search for an address to retrieve complaint, violation, litigation, property registration and emergency repair charge information. The litigation information already includes the case type, date the case was opened, the current status (open or closed) and whether a judgment is outstanding. HPD could enhance this existing reporting by clearly indicating when part of a tenant's claim is for harassment. Often, claims of harassment are made in conjunction with claims of poor conditions and currently our website does not distinguish the two claims. Information about any civil penalty amount imposed and the date of the judge's order specifically related to a finding of harassment can be provided; however, it should be noted that since most of the awards are upon default and not after a contested trial, they may be subject to challenge.

The proposed legislation requires HPD to post information regarding the findings and civil penalties within 30 days of the finding. As HPD may not receive notice of a finding within 30 days, we request this timeline be extended to 90 days in the final legislation so that we can reasonably comply with this requirement. Finally, this amendment will require an update to our data system as well as to our web application. Given competing needs for our technology resources, we request that the implementation date for the legislation be extended to 180 days.

Thank you for the invitation to testify today. I or Assistant Commissioner Rand would be happy to answer any questions from the Committee.

TESTIMONY OF LEGAL SERVICES NYC IN SUPPORT OF INTRO 129 OF 2014

New York City Council Committee on Housing and Buildings Committee on Aging

April 30, 2014

Legal Services NYC is the largest provider of free civil legal services in the country. Spread throughout the five boroughs, with an emphasis on direct legal services and broad-based litigation arising from community involvement and feedback, Legal Services NYC represents thousands of families and individuals with a host of legal problems, including housing, family law, domestic violence, youth services, immigration, foreclosure, consumer law, sustainability, and public benefits. We regularly provide assistance, advocacy, and legal representation to community groups and individuals, including those referred by the courts, community partners, and elected officials.

My name is Ian Davie. I am the Deputy Director of the Housing Unit in the Bronx office of Legal Services NYC, and I have daily contact with our housing advocates throughout the City. They have advised me of the importance of Intro 129 of 2014, in relation to remedies for breach of the duty of an owner to refrain from harassment of tenants.

We at Legal Services NYC welcome the opportunity to testify before the Committees on Housing and Buildings, and the Aging. We strongly urge the City Council to pass Intro 129, which is an important measure that will help to protect tenants against landlords seeking to harass them out of their homes. I would like to thank Committee Chairs Williams and Chin, as well as the various Committee members, for the opportunity to testify today. Your leadership on Housing and Aging issues are appreciated by the staff and advocates of Legal Services NYC and residents throughout the City. I also would like to specifically thank Council Members Chin,

Williams, Barron, Johnson, Palma, Reynoso, Rose, Rosenthal, and Mendez, for their sponsorship of the bill that is the subject of this hearing.

Intro Number 129 would strengthen the remedies available to tenants who face harassment by landlords. This bill improves deterrence and enforcement by:

- 1. increasing the range of fines on landlords found to have harassed tenants: a minimum of five thousand to a maximum of ten thousand dollars; and
- 2. requiring that the Department of Housing Preservation and Development post on its website specifics regarding harassment findings, including the address, the owner's name, the civil penalty imposed, the date, and whether a restraining order was issued against the landlord.

Already, the Administrative Code of New York clearly states that: The owner of a dwelling shall not harass any tenants or persons lawfully entitled to occupancy. Admin Code 27-2005(d). As we know, harassment, intended to cause tenants to give up apartments, or merely waive their rights, can take many forms. These include the use of force, threats, interruption of essential services, a refusal to lift a vacate order, the commencement of frivolous court proceedings, and interference with the peace and quiet of tenants. Admin. Code 27-2004(48). We appreciate the City Council's constructive steps on behalf of the millions of renters who call New York City home.

Unfortunately, tenants and advocates still see harassment happening in many forms throughout the City. Legal Services advocates, as well as elected officials, have observed that skyrocketing market rents, combined with changes to the rent regulation laws and rules, have created enormous economic incentives for landlords to harass tenants and create vacancies.

Rent stabilization laws currently permit building owners to charge 20% rent increases for apartments rented after a vacancy. Landlords can also obtain almost unlimited rent increases based on individual apartment improvements performed during vacancies, although such "improvements" are often cosmetic and their cost is frequently inflated or unsubstantiated entirely. As a result, landlords who induce tenants to vacate their apartments can hope to deregulate virtually any apartment, regardless of the rent charged to the last tenant. Coupled with these incentives is a changing urban housing landscape, and the reality that many New York City neighborhoods have experienced gentrification or hyper-inflation of market rents.

Increasingly, sophisticated landlords continue to use interruptions in services, frivolous court proceedings, and spurious fees and charges to intimidate tenants and pressure them into vacating apartments. Over time, tenants, especially the elderly, the disabled, and those with small children, can become demoralized and needlessly refrain from enforcing their rights, or even surrender long term tenancies. These tenants, generally unable to locate new housing that is affordable, are at risk of homelessness. Meanwhile, each apartment thus vacated is a permanent loss to the City's affordable housing stock.

It is therefore unsurprising that tenants and advocates alike have seen that harassment laws often remain unheeded, or thwarted, resulting in a reduction of rights or homelessness for New York City's most vulnerable populations. The recent Three Borough Pool foreclosure litigation — one of the largest multifamily foreclosures in New York City history — highlighted the problem of ongoing harassment of tenants in over 40 buildings throughout the Bronx, Brooklyn, and Manhattan. The tenants faced a lack of services — one building, in the Bronx, was without heating oil throughout the winter. The tenants faced a deprivation of their rights — building management routinely interrupted or tried to undermine tenants' attempts to form tenant

associations. And when they attempted to assert their rights, tenants faced frivolous and retaliatory eviction proceedings. Meanwhile, in unrelated cases in Brooklyn, we have seen a spate of incidents involving landlords who intentionally destroy property to force out longterm rent-stabilized tenants. These actions represent the most brazen and outrageous examples of harassment, and illustrate that some owners will continue to flout anti-harassment laws.

Intro 129, however, would more effectively address and penalize conduct that is already prohibited by anti-harassment laws. The increased fines would deter compliant owners from engaging in harassment, and would meaningfully and effectively punish those owners who continue the practice. Meanwhile, the bill would provide support and additional advocacy tools for tenants feeling discouraged under the pressure of their landlord's pattern of misconduct.

Likewise, the public posting of harassment information would establish an additional deterrent mechanism for unscrupulous landlords. The public posting by the Department of Housing Preservation and Development sends a message that the agency will not permit landlords to ignore or disregard rules that protect renters and their rights. With minimal administrative burden, HPD can track problematic owners, and coordinate with other city and state agencies to ensure that renters are able to enjoy their tenancies. Tenants and advocates will likewise be able to confirm, quickly and accurately, whether a given owner has practiced - or is still practicing - harassment of tenants.

In conclusion, it is important to note that this legislation will not affect the vast majority of landlords, those who abide by the harassment law and treat their tenants well. This legislation does not substantively affect the standard of proof or conduct required for a finding of harassment. Instead, this legislation merely improves enforcement and the deterrent effect upon landlords who harass their tenants, and provides a valuable tool for the City and advocates who

see harassment on a daily basis. Finally, this legislation provides meaningful results for tenants who face harassment, and reminds those tenants that the City of New York values the right to reside in a habitable home, and the protection of the rights that all tenants enjoy.

I respectfully urge the passage of Intro 129.

Respectfully submitted,

Ian Davie, Esq. Legal Services NYC-Bronx 349 East 149th Street, 10th Floor Bronx, New York 10451 (718) 928-2889

Edward Josephson, Esq. Legal Services NYC 40 Worth Street New York, New York 10013 (718) 237-5538



INCORPORATED

TESTIMONY

IN SUPPORT OF

INTRO 129: REMEDIES FOR THE BREACH OF THE DUTY OF AN OWNER TO REFRAIN FROM HARASSMENT OF TENANTS

PRESENTED BEFORE:

THE NEW YORK CITY COUNCIL'S
COMMITTEE ON AGING
AND
COMMITTEE ON HOUSING AND BUILDINGS

PRESENTED BY:

JASON BLUMBERG SENIOR STAFF ATTORNEY MFY LEGAL SERVICES, INC.

APRIL 30, 2014

MFY LEGAL SERVICES, INC., 299 Broadway, New York, NY 10007 212-417-3700 www.mfy.org

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 3600 tenants, including more than 2,000 who are at least 60 years old, throughout New York City. 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. 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 an integral part of New York City communities.

II. Our Clients' Experiences

The tenants who seek our help are in danger of eviction 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 represents much of the affordable housing in Manhattan and also 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 tenants – especially senior tenants – has continued. Our clients still commonly experience 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.

For example, Ms. S, a 77-year-old rent controlled tenant of 44 years, was recently sued by her landlord based on the allegation that she does not live in her apartment. The only basis for this allegation was an electronic search by the landlord showing that she does not have a landline and has not applied for any credit cards in the past two years. In the past four years, the company that owns her building has brought 215 eviction cases against the tenants in 208 apartments that it owns on the Upper West Side – more than one case for every apartment. 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 unfair stipulations that they do not understand that have been drafted by the landlord's attorney.

Mr. M is a 73-year-old rent controlled tenant of 56 years in the East Village. In 2012, his landlord began demanding that he pay in cash for the portion of his rent covered by the Senior Citizens Rent Increase Exemption (SCRIE). The landlord's managing agent confronted Mr. M on the street near his building, shouting and threatening him. In 2013, Mr. M's landlord sued

him in Housing Court for two thousand dollars already paid by SCRIE. Mr. M travels to Brooklyn several days each week for cancer treatments, and would have defaulted in the court case if he had not been fortunate enough to have a lawyer from MFY Legal Services. His Housing Court case was dismissed, but the landlord has continued to bill him each month for the same rent already paid by SCRIE. It is likely that his landlord will sue for the same rent again this year.

These stories are not unusual. Every week, MFY receives phone calls from tenants whose landlords have accused them of not living in their rent-regulated apartments, failing to pay the Section 8 or SCRIE share of their rents, denying access for nonexistent "emergency" repairs, and other invented claims. The mass-produced nature of these cases means that for every senior citizen who contacts MFY, there are a dozen more who have received identical notices.

III. Recommendations

Landlord harassment of elderly tenants continues because it works, and it works because it is cost-effective. Only a small percentage of harassed seniors have the resources and wherewithal to bring a harassment claim in Housing Court. A one-time single civil penalty of \$5,000 is not significant deterrence to a landlord expecting to profit more than \$2,500 per month in perpetuity if it can drive out an elderly rent-controlled tenant.

For this reason, MFY strongly supports the proposed amendments to double the civil penalty for harassment and make harassment violations visible on the Department of Housing Preservation and Development (HPD)'s website.

Doubling the civil penalties for harassment would bring the law closer to accounting for the fact that each tenant who brings and wins a harassment claim in Housing Court is in fact effectively standing in for dozens more silent victims of harassment. MFY strongly urges the Council to consider even greater increases in penalties, especially where a tenant can show that the harassment they have suffered is part of a broader pattern of harassment against others who are not in court.

Listing harassment violations on HPD's database and website will further increase the cost to landlords of harassment by providing information to prospective tenants. Tenant harassment is usually part of a scheme to empty, deregulate, and then re-rent apartments on the market. As the law stands now, prospective tenants have no way to know that a history (and probable future) of egregious conduct and uninhabitable conditions lies behind fresh coats of paint and shiny new countertops. Publicly available records of harassment could lower a deregulated apartment's value on the market, removing some of the financial incentive for harassment.

IV. Conclusion

MFY Legal Services strongly supports Intro 129, and commends the Council for its continuing efforts to curb abusive landlord practices. This bill is an excellent step towards removing the incentives for tenant harassment.

Testimony of The Legal Aid Society

Presented Before

The New York City Council Committee on Housing and Buildings

On

Intro 0129-2014 A Local Law To Amend To Amend The Administrative Code In Relation To Remedies For Breach Of The Duty Of An Owner To Refrain From Harassment Of Tenants

April 30, 2014

Interest and Expertise of the Legal Aid Society

The Legal Aid Society welcomes this opportunity to testify before the Committee on Housing and Buildings in support of Intro 129.

The Legal Aid Society is the oldest and largest legal services provider for low-income families and individuals in the United States. Annually, the Society handles more than 300,000 legal matters for low income New Yorkers with civil, criminal and juvenile rights problems. The Society's Civil Practice provides advice and legal representation in some 48,000 individual civil matters that benefit nearly 120,000 New Yorkers. In addition, the Civil Practice is counsel in law reform cases that benefit two million low-income families and individuals in New York City. The Civil Practice provides this assistance through a network of 16 neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects. The Civil Practice also provides extensive back up support, training, and technical assistance for community organizations.

<u>Intro 129</u>

The Legal Aid Society supports Intro 129 because it will make it easier for tenants, tenant advocates, and governmental agencies charged with enforcing tenants' rights to stop landlords from engaging in harassment of their tenants.

Low income tenants in New York City, particularly rent stabilized and rent controlled tenants with very low rents and tenants residing in "gentrifying" neighborhoods, are especially vulnerable to harassment by their landlords.

A recent case handled by my office illustrates the problem. My office recently represented a tenant who had been illegally evicted from her rent stabilized, Section 8 subsidized apartment by her landlord. The horrible situation this tenant and her family found themselves in highlights the need to strengthen current legislation prohibiting harassment of tenants by landlords.

While the tenant was away for two weeks visiting family, her landlord changed the locks to her apartment, threw away the tenant's personal belongings, and almost immediately began to demolish the apartment. When the landlord refused to permit the tenant to return the apartment, the tenant was forced to commence an illegal lockout proceeding against her landlord.

Fortunately, the court issued an order restoring the tenant to possession of her apartment.

Since then, the Tenant Protection Unit of the New York State Division of Homes and

Community Renewal has opened an investigation into allegations that her landlord has been routinely harassing tenants in other buildings it owns or manages.

Increased Civil Penalties

If enacted Intro 129 would increase the civil penalties a court may impose upon a finding that a property owner has harassed a tenant to a minimum of \$5,000, and maximum of \$10,000 per violation.

A increase in civil penalties would discourage landlords from engaging harassing conduct such as illegally locking tenants out of their apartments, cutting off essential services, demolishing significant portions of a building without regard to the health and safety of the current tenants, and having construction work done in the building without proper permits.

Given the financial rewards reaped by landlords when they force long-term rent stabilized and rent controlled tenants to vacate their apartments, it is important to create a financial disincentive for landlords to engage in this conduct.

However, in order for this provision of Intro 129 to be effective, the increased fines must be coupled by stronger action by HPD to seek these fines, and to collect them when they are imposed. Adding a provision that either precludes HPD from waiving or settling the amount of penalties imposed, or alternatively, precludes HPD from doing so without the consent of the complaining tenant would strengthen the legislation as it is currently proposed.

Posting of Harassment Violations

Intro 129 would mandate the posting on HPD's website any violations issued against a landlord for harassment, the address of the unit subject to the violation, the name of the owner, the amount of civil penalties imposed, and whether an order restraining the owner from committing further acts of harassment was issued.

Many tenants are understandably hesitant to make a claim of harassment against their landlords as they fear retaliation. It can be extremely difficult for tenants to document and prove harassment by their landlords. Many times when tenants' allegations of harassment by their landlords go forward to a hearing or trial, the tenants are the only witnesses available to testify regarding the harassment. This is particularly true when the harassment consists of verbal abuse, and threats.

Posting harassment violations, the penalties imposed, and the name of the landlord, on HPD's website would create an extremely valuable resource for tenants and their advocates, when litigating claims of harassment.

During a hearing or trial regarding a claim of harassment, tenants, their advocates, and court staff would be able to access HPD's website to determine whether a violation of harassment has been issued against a landlord. The issuance of a violation of harassment against the tenant's landlord can add context and credibility to a tenant's claim of harassment, and demonstrate a pattern and practice of harassment by the landlord.

Additionally, this provision would allow tenants and their advocates to organize more effectively to defend themselves and their buildings against harassment by landlords. With harassment violations listed on HPD's website, tenants and their advocates would be able to determine whether a landlord has been issued violations for harassment against other tenants in the same building, or whether the landlord has been issued violations for harassment of tenants in multiple buildings.

CONCLUSION:

Thank you for the opportunity to testify before the Committee on Housing and Buildings.

We look forward to working on these issues with the committee.

Respectfully Submitted:

Judith Goldiner, Attorney-in-Charge, Law Reform Unit

Kathleen Brennan, Staff Attorney THE LEGAL AID SOCIETY

199 Water Street, 3rd Floor

New York, New York 10038

(212) 577-3332



Testimony by New York Legal Assistance Group

before the NYC Council Subcommittee on Housing and Buildings:

Remedies for Breach of the Duty of an Owner to Refrain from Harassment of Tenants

April 30, 2014

Chair Jumaane D. Williams, Councilmembers, and staff, good morning and thank you for the opportunity to speak about the proposed amendments to Local Law 7 of 2008, the Tenant Protection Act. My name is Shari Mandel and I am a Senior Staff Attorney in the Housing Project at the New York Legal Assistance Group ("NYLAG"), a nonprofit law office dedicated to providing free legal services in civil law matters to low-income New Yorkers. NYLAG serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, domestic violence victims, persons with disabilities, patients with chronic illness or disease, low-wage workers, low-income members of the LGBT community, Holocaust survivors, and veterans, as well as others in need of free legal services

The Housing Project at NYLAG sees countless tenants who have suffered harassment by their landlord, both criminal harassment and conduct that falls under the Tenant Protection Act. Specifically, we speak to tenants who have suffered injustices at the hand of their landlord such as turning off essential services, threats, and commencement of frivolous cases, all done to induce the tenants to give up their rights to an apartment.

For example, NYLAG worked with Miguel, who endured severe harassment at the hands of his landlord. Miguel's landlord continuously called him and his wife derogatory names in Spanish. The landlord further blasted loud music overnight on a regular basis, and at one point actually placed a toilet and threw garbage in the hallway outside Miguel's apartment. Most egregiously, Miguel's wife was assaulted by the landlord in front of their child. All of these actions were taken in an attempt to induce

Miguel and his family to leave the rent stabilized apartment where they had lived for thirteen years. This is just one such story of tenant harassment that NYLAG hears.

The amendments proposed by this Committee are certainly a move in the right direction.

Increasing the potential penalty for landlords serves as a deterrent to landlords who might otherwise harass their tenants. Further, it has the potential to prevent landlords from committing a second instance of harassment. Additionally, the prospect of having their names listed on a website that is open to the public may also assist in discouraging landlords from harassing their tenants.

We also urge this Committee to consider further amendments that allow tenants to sue landlords of one- or two-family dwellings, as those are the tenants that often need the Tenant Protection Act the most. Owners of one- or two-family dwellings are more likely to resort to harassment in dealing with a tenant. Further, they are more likely to live in the subject premises, thus increasing the likelihood of conflict if they are considering commencing, or have already commenced, a housing court proceeding against their tenant.

Moreover, we recommend that the Committee consider imposing an additional, increased penalty upon landlords who are found to have committed multiple instances of harassment at different times, so that they are penalized for subsequent acts of harassment.

We conclude by urging the City Council to continue to make steps towards protecting the vulnerable tenants of New York City, and to take into consideration the recommendations made herein.

We would welcome the opportunity to further discuss or comment on these matters in the future. Thank you for the opportunity to testify today.

Respectfully submitted,

Shari Mandel, Esq.

Senior Staff Attorney

New York Legal Assistance Group

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