

A Legal Tool for Tenants

by Emily Jane Goodman
Wednesday, January 30, 2008 12:00 AM

Just when it seemed that tenants would have no new protections in the landlord-tenant wars, along comes a City Council bill that for the first time would give victimized tenants a [weapon](#) designed to protect them from harassment by landlords.

Elsewhere in Gotham Gazette:

[Reforming Housing Laws](#) : Housing advocates have launched a major campaign to change New York's laws on rental housing. To accomplish that, they plan to help Democrats capture the State Senate in November.

After years of tenants alleging harassment by owners who seek to oust them to raise rents or gain possession of apartments, tenants may soon be able to sue in Housing Court. Under pending legislation, Intro [627 or the Garodnick bill](#) , introduced by Daniel Garodnick, a City Council member from Manhattan's East Side, landlords who harass, threaten, intimidate or withhold essential services to force lawful occupants to vacate apartments may find themselves in court as defendants. According to housing activists, the landlords sometimes try to oust tenants so they can dramatically increase controlled or stabilized rents to market levels, or empty buildings for sale, demolition or conversion to cooperative or condominium ownership.

The history of the landlord-tenant wars in this city is filled with charges of physical threats, attack dogs, dangerous building conditions -- all tactics to push tenants out. As affordable housing vanishes and is replaced by luxury units, tenants, especially those in the remaining rent regulated apartments are, according to the bill's sponsors, at increasing risk.

Currently, the only actions tenants can initiate in Housing Court are complaints about lack of services or conditions that violate building department requirements or the regulations affecting health, safety and living conditions. "Right now, tenants cannot use the word 'harassment' in Housing Court," said Gale Brewer, an Upper Westside council member who is a co-sponsor of Intro 627.

Brewer cautions that an anti-harassment law would not be easy to administer, but she hopes it might help focus attention on the need for victims of harassment, especially the elderly, to have

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legal representation in Housing Court.

A companion bill, [Intro 638 or the White-Comrie bill](#), contains parallel language that would allow landlords to sue their tenants for harassing them by bringing unsubstantiated complaints and claims to city agencies. This, too, would increase the need for legal representation for tenants who are rarely represented by lawyers and who cannot obtain free legal assistance from offices that cannot service all who seek help. However, lacking support, and with the council focused on 627, 638 appears to have little chance for passage, and the issue of tenant harassment of landlords has faded from the political screen, at least for now.

In explaining the rationale for a measure to protect tenants, Intro 627 reads, "The council is concerned that as it becomes more profitable for some owners to remove their buildings or individual apartment units from rent regulations, Mitchell-Lama programs, Section 8 and other forms of affordable housing or buildings are located in neighborhoods that are gentrifying, there is an incentive for unscrupulous owners to act in ways designed to force the existing tenants from their homes and convert the units to higher -priced apartments." The intent is to prevent harassment and to "ensure that city government responds to harassment in a more effective manner so that tenants can enjoy the peace and quiet of their homes."

The measure defines harassment as, "any act or omission by an owner that causes or is intended to cause a lawful occupant to vacate an apartment unit or forgo any occupancy rights, including threats, violence, and "repeated baseless or frivolous court proceedings."

The proposed penalties would include civil fines of \$1,000 to \$5,000 for each home where the violation has occurred. Where a tenant charges lack of heat or other essential services, the landlord would have to prove that the problem did not result from intent or gross negligence and that reasonable efforts were made to correct it.

If a judge decides in favor of a landlord, he or she can impose legal fees on the tenant. Tenant advocates fear that this could discourage tenants from asserting these rights since the judge may order the tenant to pay the owner's attorney's fees. This assumes, as will almost always be the case, that the owner has legal representation, even though the tenant does not.

If a tenant has already lost two claims of harassment in the prior 10 years, with the court finding

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those charges to be without merit, a landlord can seek a court order enjoining the tenant from filing any further harassment claims unless the tenant obtains permission from the court.

Intro 627 is expected to be enacted with little or no opposition. Even with the number of affordable rental units declining as building ownership converts to cooperative, condominium and luxury housing, New York is still a city of renters.

VICTIMS AS TENANTS

A separate housing measure enacted by the state legislature late last year aims to protect individuals or families who must leave their rented homes because of domestic violence. Where a decision or an order of protection determines that "abiding by the lease agreement may be dangerous for the victim," that person cannot be held responsible by the landlord or management for any remaining period of the lease. However, any arrears preceding such an order must be paid.

This is similar to existing legislation in which the elderly who die or who leaves their residences because of hospitalization or to move to nursing homes cannot be liable for the remaining time on their leases. As with the domestic violence victims, the rent must be current until the tenant actually leaves.

In other words, there are exceptions to what would otherwise be considered a breach or premature termination of lease. Before a judge issues what is called a "lease termination order," the tenant must establish to the court's satisfaction that the request is made in good faith, that the tenant asked the landlord to voluntarily terminate the lease and was refused, and that the tenant or the tenant's child remains at substantial risk of physical or emotional harm by remaining on the premises.

If two spouses are on a lease, the court may sever the co-tenancy.

The forms to be used to request a termination do not appear to contemplate or address the situation where it is the offending assailant, not the victim, who should leave the apartment, rather than the victims of violence, nor does there seem to be any provision for the assailant to have to continue to contribute to the rent for the rest of the family. Presumably that would be considered in separate support proceedings. Criminal Court and Family Court will have

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jurisdiction over these requests although they could probably also arise in state Supreme Court in the context of a divorce.

AFTER LOPEZ TORRES

As has been widely [reported](#) , earlier this month, the Supreme Court of the United States rejected the [Lopez Torres v. Board of Elections](#) lawsuit challenging the constitutionality of the way New York's state Supreme Court justices are elected. The battle will soon shift to a controversial, and long threatened, attempt to amend the state constitution to replace election of judges altogether with what its supporters call a "merit system," a euphemism for appointment by elected officials. The so-called reformers led by Gov. Eliot Spitzer favor a system where the power to choose judges would reside with the governor rather than with the public, local political clubs and other elected officials.

With the idea of a constitutional amendment on Spitzer's "must do" list, there is virtually no doubt that a constitutional amendment will be put in play in an effort to completely end the election of state judges.

A constitutional amendment would be supported by court management -- who are all appointed and not elected - judges and "good government" groups. Of course, the person who has made the appointment of judges a priority, is the governor, who would have complete control over appointments and deciding who becomes a judge.

Opponents of a constitutional amendment point out that that many people supporting a "merit system" are the same people who argue that the current system, where party judge candidates are chosen by a convention and then go before voters in the general election, does not allow the public full participation. But they fail to mention that if elections were to be eliminated, the public's participation would be eliminated, too.

Once such an effort is introduced, there will be a strong and active push in each direction. The legislature would be a very hard sell. It would take years and an enormous investment of money and political maneuvering to convince voters to amend the constitution. Even if the public can be persuaded that they dislike electing judges, they might find amending the constitution more distasteful. When asked to change the state constitution, historically, voters just say "No."

Emily Jane Goodman is a New York State Supreme Court Justice