

Illegal Threes

by {ga=jlampert}
Tuesday, December 02, 2003 12:00 AM

Â On a recent sunny fall day, Robin Demmo was at Queens Borough Hall looking at a faded copy of the Certificate of Occupancy for the two-family house she was living in on 55th Road in Elmhurst.

She was confirming her suspicions about the apartment she rented for \$900 including gas and electricity about six months ago: the apartment was illegal.

Like the proverbial crazy aunt in the basement, the problem of "illegal threes" - the name given to two-family houses that have an illegal third apartment - is one housing issue that causes dilemmas and resists any easy resolution. Many people simply want to pretend they don't exist. A recent ruling by an appeals court on an "illegal three" case has not helped to clarify things.

According to 2000 Census Bureau statistics, there are about 400,000 two-family houses in New York City, mostly in Brooklyn and Queens. Many of the owners of these houses, looking for an extra dollar, convert the basement into an apartment and voila, they create an illegal apartment.

But it's a problem that many people are willing to overlook in the city, mainly because illegal apartments satisfy a variety of interests.

"They've always been around and they probably always will be around," said Carl Peterson, the senior borough coordinator for the organization I work for. "They're a significant amount of the housing in Queens.

"What an illegal three does is that it provides much-needed money for that homeowner and affordable housing for tenants," Peterson explained. "All these people need a place to live and so all these landlords do the same thing - they chop their houses up."

Illegal apartments are so common in Queens, many people simply do not realize that where they live is illegal, Peterson said.

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"Unless it's definitely seen as hazardous or dangerous, not many people notice," Peterson said. "Because I've talked to people, housing advocates even, and they say, 'I live in a basement apartment and it's nice!'"

Robin Demmo said her apartment was a comfortable one-bedroom with a living room- kitchen combination that is "perfectly safe." Not everyone, consequently, wants to see the zoning laws strictly applied.

Politicians have launched occasional efforts over the years to crack down on illegal apartments and one Queens newspaper even asked readers to send in their landlords' names if they lived in illegal apartments. But everyone knows the apartments have not been eliminated - not even close.

A lot of people are looking the other way when they think an apartment is illegal - and not just complicit landlords and tenants. Demmo said when she called police to have her landlord put her electricity back on, they told her they wouldn't file a police report because doing so would reveal that the apartment was illegal - and lead a housing inspector to issue a vacate order.

The threat of a vacate order effectively discourages tenants from reporting problems in the apartments to housing authorities. If a tenant wants the heat on or a leak fixed, he has to weigh his desire against the likelihood that a housing inspector would order his apartment vacated because it was illegal.

The illegality of the apartment also prevents landlords from filing cases against tenants in illegal apartments in Housing Court. For years, Housing Court judges have simply dismissed any cases involving illegal apartments because the court lacks jurisdiction.

This meant that if a landlord wanted to get a tenant in an illegal apartment out, she had to file an "ejection action" in Civil Court or Supreme Court, depending upon the value of the house.

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A recent appeals court ruling has changed that. The court ruled that a landlord's failure to register a two-family house as a multiple dwelling, which is what it becomes when a third dwelling unit is added, does not mean Housing Court cannot hear the case - if the tenant waives this defect and accepts the jurisdiction of the court.

If the tenant does not waive the defect and makes a timely motion to dismiss the case, however, the judge can and should dismiss the case. Then, the landlord will have to file an ejectment action at Civil Court or Supreme Court, just like old times.

But having the case heard in Housing Court may serve some tenants' interests. Generally, Housing Court judges afford tenants more time to move than Civil Court or Supreme Court judges.

Robin Demmo was weighing exactly those types of options with Carl Peterson recently. The Certificate of Occupancy for her house was clear: the first floor walk-in apartment she occupied was illegal. According to the certificate, the building's first floor was meant to house the boiler and provide space for storage - not a tenant.

The landlord can still get her out, but Demmo needs time to find a new place. She said she would ask the Housing Court judge to adjourn the case in order to get legal advice. That has the benefit, too, of buying her some time.

Because the apartment is illegal, she could possibly buy more time when the court does hear the case by asking the judge to dismiss the case altogether. The landlord would have to file an ejectment action and that would give her more time again.

"I'm looking at an apartment today," she said of her efforts to avoid eviction or ejectment. "I don't want to go through the tears and the crying that I don't have a roof over my head."

Joe Lamport is the assistant director of the [City-Wide Task Force on Housing Court](#), a coalition of community housing organizations.

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