

Section 8 Tenants Win The Right To Stay In Their Rent-Stabilized Apartments

by {ga=ejgoodman}

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In a decision which clarifies the rights of the approximately 52,000 New York City tenants who receive Section 8 housing subsidies, a State Supreme Court justice has issued a declaratory judgment finding that landlords of such tenants are required to renew expiring leases for rent stabilized apartments, and to renew them with Section 8 benefits.

In *Rosario v. Diagonal Realty*, Manhattan Justice Joan Madden held that although federal law allows landlords to withdraw from Section 8 participation at the end of a lease, New York's Rent Stabilization Law controls and does not permit "opting out". Local law, the judge wrote, mandates that tenants be offered renewal leases on the same terms as the existing lease. If there is a Section 8 rent subsidy, the same terms must govern the next lease. The decision, which is at variance with several Housing Court cases, does not allow owners of rent stabilized apartments who have accepted the Section 8 vouchers and the accompanying tax benefits, to refuse them when a lease expires. Prior to the commencement of the lawsuit, The New York City Housing Authority had informed the landlords in writing, that they "cannot offer the tenant a renewal term without also renewing the Section 8 subsidy."

The concept of the subsidy created by the federal department of Housing and Urban Development in 1974, and known as Section 8, is that qualified low income tenants should not have to pay more than 30 percent of their income for rent. Landlords who participate in the program receive tax incentives to provide affordable housing by contract with HUD, by way of contracts with local housing authorities such as the New York City Housing Authority.

In a group of cases consolidated for decision because they presented identical facts and issues, the judge found that tenants receiving Section 8 subsidies would be denied the benefits enjoyed by other New York City tenants living in rent stabilized apartments if their landlords refused to continue their tenancies on the same terms. To treat the subsidized tenants differently from other tenants protected by local laws, would have a discriminatory effect, Justice Madden wrote. Except for regulated rent increases, non-subsidized tenants are entitled to lease renewals under the same terms as the expiring lease. None of the seven tenants who commenced the proceedings through the Legal Aid Society and Bronx Legal Services, could afford to remain in the apartments under new conditions and at newly set rents.

The property owners had argued that despite New York law, under federal law they had the right to opt out of Section 8 participation at the end of a lease term. They maintained that they were not refusing to renew the leases, but wanted the right to renew them at market rents or on other terms and conditions, but without the subsidy. Their theory was that a 1996 amendment to

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federal law barred landlords from terminating tenancies "during the term of the lease." This, they reasoned, freed them from the original terms when the tenancy was at the point of expiration. The landlords also argued that discrimination would exist only if they had refused to rent to the low income tenants in the first place. However, no landlord is required to enter into an initial agreement with the Housing Authority to rent apartments to Section 8 recipients, unless that landlord is receiving public benefits in the form of tax relief. A tenant qualified for the subsidy must find her own apartment offered by a property owner who participates in the Section 8 program because that individual or corporation is also receiving a public subsidy. Justice Madden rejected the notion that the federal law prevented New York from relying on its own protective statutes governing housing.

While protection is being afforded eligible tenants, landlords enter the Section 8 program because of the advantages afforded them. New York City provides tax incentives in the form of abatements and exemptions for the improvement and rehabilitation of residential buildings and to increase the availability of affordable housing. The city Administrative Code, known as J-51, specifies that property owners participating in this tax relief must not discriminate on the basis of race, national origin, religion, gender, sexual orientation, disability, marital status or citizenship. The section also bars discrimination on the basis of eligibility or participation in a governmentally funded housing assistance program, including, but not limited to, the section 8 housing certificate program. Therefore, any property owner taking advantage of J-51 is bound by the nondiscrimination requirements. At the time of this enactment, then Mayor David Dinkins emphasized that "all housing, including private housing receiving public subsidies or tax benefits, is available to all New Yorkers, especially to those who are most in need." Justice Madden, in her opinion, expressly stated that nothing in federal law was intended to preempt "operation of State and local laws that prohibit discrimination against a Section 8 voucher holder." It is "unquestionable," she wrote, that the anti-discrimination provisions of the J-51 law are not preempted by any provision of the Section 8 law.

"...any landlord in New York City receiving a J-51 tax abatement is legally mandated under the anti-discrimination protections of the J-51 law, to accept and continue accepting a tenant's Section 8 rent subsidy." The defendant landlords who had refused to renew leases unless ordered to do so by a State Supreme Court judge, "are obligated to continue accepting their tenants' section 8 rent subsidies, and are not permitted to opt-out of Section 8 as long as the are receiving the benefits of a J-51 tax abatement."

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