

Rents Are Out Of Control: Legislative Solutions for Rent Controlled Tenants

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**TENANTS &
NEIGHBORS**



Introduction

Rent control is an important resource for low to moderate income tenants throughout New York State. Rent control is also often misunderstood. The common stereotype of rent controlled tenants is one of tenants who pay unbelievably low rents to live in lavish apartments located in desirable neighborhoods. Recent news articles tell stories of people paying as little as \$58 to live in Little Italy or \$152 for an Upper East Side apartment.¹

These stories paint a picture that is radically different from the experience of the majority of rent controlled tenants today; the reality is that most rent controlled tenants are seniors, living on a fixed income, struggling to afford the rising rents of the apartments that they have called home for decades. Rent controlled tenants in New York City have a median income of \$24,000 and pay a median of 30% of this income toward rent.²

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Rent controlled tenants are often misunderstood as a tenant group because their numbers are relatively low and they are dispersed, living in apartments spread throughout the state rather than grouped together in a few buildings. Though their numbers are small, the issues faced by rent controlled tenants reflect the growing problem of keeping New York livable for all New Yorkers.

Tenants & Neighbors has been organizing with a dedicated group of rent controlled tenants who came together to both combat the public perception of rent control and work towards changing rent

1 Haughney, Christine. (24 March 2010). Rent Control is a Vanishing New York Treasure. New York Times. Retrieved from <http://www.nytimes.com/2010/05/25/nyregion/25appraisal.html>

2 United States Census Bureau. (2008). Housing and Vacancy Survey. Retrieved from <http://www.census.gov/hhes/www/housing/nichvs/2008/ser1a.html>

control laws. In this paper, we lay out the basics of rent control, the issues tenants have identified with the system, and the reforms we see as the necessary steps forward in our work to reform the rent control system to protect the rights of rent controlled tenants.

History of Rent Control

Though the roots of rent control go back to at least the 1920s, the current system began as a post-World War II federal rent control program. In 1950, the federal government ended its program and passed the program on to states, who could decide whether or not they wanted to continue the program. A well-organized tenant movement ensured that New York continued the program on a state level. Since then, the control has been passed from state to city and back to state, with changes to the program made along the way. Today, rent control is overseen by the state agency New York Homes and Community Renewal (HCR).

In the 1950s, there were two million rent controlled apartments in New York City; today, there are fewer than 39,000.

All rent controlled apartments are located in buildings built before 1947; rent controlled tenants in buildings with three or more units have lived in their apartment since July 1, 1971, while rent controlled tenants in one or two family buildings have lived in their apartment since 1953. Some tenants may be family members or others who have succeeded the original rent controlled tenant. If there is no family member to succeed to a rent controlled apartment, as long as the legal regulated rent is lower than the threshold for vacancy deregulation, and the building has six or more apartments, the apartment enters rent stabilization.

Because of these restrictions, most rent controlled tenants today are senior citizens who have lived in their apartments for many decades. The exact number of rent controlled apartments is difficult to determine, but estimates put the number at about 39,000 rent controlled apartments left in New York City today (1.9% of occupied housing); this number is a significant drop from the two million rent controlled apartments in the 1950s and one million in the 1970s.³

How Are Rents Determined in Rent Controlled Apartments?

Many people mistakenly believe that rents are frozen in rent controlled apartments. This couldn't be further from the truth.

Rents for rent controlled apartments are determined through the Maximum Base Rent (MBR) system. An MBR is determined for each rent controlled apartment was determined in the early 1970s or when it entered the rent control system. That MBR is increased every two years using a formula which takes into account real estate taxes, water and sewage charges, operating expenses, return on capital value, and vacancy and collection loss allowance. This ceiling rent is the highest amount that a landlord can charge for a rent controlled apartment. The rent that tenants actually pay is called the Maximum Collectible Rent (MCR). The MCR can be increased by up to 7.5% each year until it reaches the MBR, which can be increased every two years or by Major Capital Improvement or other increases. In contrast, the percentage increases for rent stabilized apartments have historically been less than those paid by rent controlled apartments, sometimes significantly less. As a result, many rents paid on rent controlled apartments are now higher than rent stabilized

³ United States Census Bureau. (2008). Housing and Vacancy Survey. Retrieved from <http://www.census.gov/hhes/www/housing/nychvs/2008/ser1a.html>

rents for comparable apartments.

In order to increase the rent in rent controlled apartments, landlords must apply for a Maximum Base Rent Order of Eligibility, a process which is done every two years, six months prior to the increase period. HCR sends landlords and tenants an Order of Eligibility form; if landlords wish to apply for a rent increase, they must file a Violation Certification, stating that all Class C violations and 80% of all other violations on record have been or will be removed. The landlord must also file an Operation and Maintenance and Essential Services Certification, in which he must state the building's income and expenses, as well as certify that he paid, or promises to pay, 90% of the expense allowance for operation and maintenance of the building, and that he will maintain all essential services. Once HCR has reviewed and approved the landlord's application, HCR will issue an MBR Order of Eligibility to the landlord. Finally, the landlord is required to serve tenants with a Notice of Increase in MBR and MCR calculations, to alert them of the rent increase.

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In addition to paying an increase of up to 7.5% each year, many rent controlled tenants also pay a fuel pass-along charge. This charge varies each year with the cost of fuel, and can amount to anywhere from \$25 to \$40 per room for an apartment. Rent controlled tenants could also be required to pay Individual Apartment Improvement (IAI) increases with their consent of the work, hardship increases with HCR approval, high labor cost increases, and applicable Major Capital Improvement (MCI) increases. Whereas MCI increases for rent stabilized tenants in New York City cannot exceed 6% of their rent for the given year, MCI increases for rent controlled tenants can be more than double that, up to 15% of their rent for the year.

Rent controlled tenants do have a few opportunities to challenge or stop increases, though there is no guarantee they will be able to count on these protections. Some tenants can apply for Senior Citizen Rent Increase Exemption (SCRIE). In order to be eligible for SCRIE a rent controlled tenant or his or her spouse must be 62 years of age or older, have an income of less than \$29,000 per year, and pay at least one third of their household income toward rent, or face a rent increase that will bring their rent to a level exceeding one third of their household income. Rent controlled tenants can also challenge an increase if their landlord has not fixed the code violations necessary to collect a rent increase by filing a RN-94 form within 33 days of receiving an RN-26 form (notice of a rent increase). Tenants can also use the RN-94 form to claim that their landlord either does not need an increase to maintain the building, or that their landlord is not providing essential services and thus should not receive approval for an increase.⁴

Problems with Rent Control

Rent controlled tenants are just one face of the affordable housing crisis that New York City has undergone in recent years. As rents increase in every borough, long-time tenants are pushed out of their apartments in favor of new tenants willing and able to pay higher rents. The forces of gentrification and displacement have driven rents to levels unaffordable by many New Yorkers,

⁴ Metropolitan Council on Housing, Rent Control Fact Sheet. Retrieved from <http://www.metcouncil.net/factsheets/rentcontrol.htm>.
5 Jones, David and Silver, Sheldon. (20 March 2011). N.Y.C. is hemorrhaging rent-controlled apartments; we need vacancy decontrol reform. New York Daily News. Retrieved from http://articles.nydailynews.com/2011-03-20/news/29185785_1_rent-stabilized-rent-laws-decontrol

and the programs in place to protect them are proving to be insufficient to keep them in their homes.

Programs such as rent stabilization and rent control have experienced a massive loss of rent regulated units: records indicate at least 13,500 rent stabilized apartments are lost each year, and thousands of rent controlled apartments have left the program in the past five years alone.⁵ With market rents increasing every year, landlords have economic incentives to leave rent regulation programs and put apartments on the unregulated market; rent controlled tenants bear the brunt of this pressure through increased rents, additional charges, and harassment.

“The problem with the so-called Maximum Base Rent is that it never stops going up. Rent controlled tenants are mostly seniors, and if we don’t die first, we will be forced to move.”

The MBR system of determining rents has served to raise rents to levels that many tenants cannot afford. Though rent control was designed to keep rents affordable for tenants, many rent controlled tenants are finding it more difficult to pay their rent with each yearly increase. Most of the tenants in rent controlled apartments are seniors, many of whom are retired and living on a fixed income.

With the MCR increasing by up to 7.5% each year with no comparable increase in income, tenants are left to pay larger and larger percentages of their incomes toward housing.

“Times are very difficult,” an 86-year old rent controlled tenant says. “Times are hard for everybody. But for some reason, the real estate sector thinks it is...removed from the reality of the world.”

“There seems to be no end in sight. I’m going to get to the point where I hit a wall and can’t afford to live here anymore.”

Other tenants have rents that are higher than their incomes, and are dipping into their savings or assets to pay for their housing. Some tenants have even been forced to take on roommates to support increasing rents.

“In September 2001, my rent was \$1,076. In September 2011, my rent was \$1,914. My salary only increased \$350 in that same time. Because the economy is so bad, my income has not increased for the past three years. But my rent keeps going up 7.5% each year anyway.”

Many seniors who face these rent increases each year apply for the SCRIE program to freeze their rents, but are often turned away because they are not eligible. In order to be eligible for a rent freeze, tenants must be over 62 years of age and make less than \$29,000 each year. However, this income level takes into account Social Security, pension, public assistance, Supplemental Security Income payments, and rent from boarders, which disqualifies many seniors.⁶ With SCRIE, rent controlled tenants would be protected from future increases.

One rent controlled tenant lives with her daughter, who is disabled, and finds it increasingly difficult to make ends meet. Living with a dependent daughter, she worries that rising rents will leave them both with no choice but to move from their home: “I don’t qualify for SCRIE because my daughter and I both get social security income. We pay taxes on it, but they calculate it pre-

⁶ New York City SCRIE Application. Retrieved from <http://www.nyc.gov/html/dfta/downloads/pdf/scrie.pdf>

tax, so it's even worse. If I got SCRIE, it wouldn't make it any better than it is now, but at least I wouldn't have to anticipate another 7.5% [increase] and another and another."

In addition to the high rent increases each year, rent controlled tenants pay a fuel pass-along charge that adds significantly to their cost of living. Landlords are able to pass fuel costs on to rent controlled tenants, which can generally amount to somewhere between \$25 and \$40 per room. The cost of fuel depends on the type and price of fuel that the landlord uses, and can fluctuate each year. Some tenants testify paying up to \$140 extra each month, which, when added onto already mounting rent levels, can be the deciding factor in their ability to stay in their apartments. Rent controlled tenants are the only group of rent regulated tenants paying this fuel charge; under the Rent Guidelines Board, rent stabilized tenants have their fuel costs factored into their rent each year. Another increase that rent controlled tenants may be subject to is a labor pass-along; if a tenant lives in a doorman building with unionized employees and the union negotiates a new contract raising salaries for employees, some of this cost is passed on to tenants.

“Many rent controlled seniors are so frightened and do not know how to defend themselves. They are forced out of their apartments.”

“I pay more than one-third of my income toward my rent, almost one-half. In addition to the [rent increase] each year, I also get a fuel pass-along, which goes up with the price of oil,” states one rent controlled tenant. “The amount I used to pay in rent used to be comfortable, but now being retired, and especially with the fuel pass-along, it is too expensive.”

“I have no idea where I would move. It's too heartbreaking to think about. I'm born and raised in Manhattan, and all my kids are born and raised in Manhattan...this is where my life is.”

Rent controlled tenants also experience harassment at the hands of landlords who are eager to pressure them to leave in order to raise rents on the apartment to market rates. One rent controlled tenant has been fighting for months with a landlord who served her with eviction papers. “I know that they can't just throw me out,” the tenant says, “but being served with these eviction papers is extremely upsetting. I felt desperate and could not sleep. I was lucky to get help from an attorney who helped me pro-bono. If I did not speak fluent English and did not know that I had some rights, the landlord would have had his way, and I would have been forced out of my apartment. Thousands of older people lose their homes that way.”

Some landlords have been known to lag behind in repairs to rent controlled tenants, hoping that the rent controlled tenant will leave the apartment. Some tenants are intimidated into paying for repairs themselves or vacating their apartments under landlord pressure. “Rent controlled tenants,” one tenant says, “don't ask for anything. We get used to living with things like yellow walls [from old paint].”

With apartments around them being rented for upwards of \$7,000 per month or sold for millions, rent controlled tenants are being squeezed out of an increasingly expensive market in favor of tenants who can pay incredibly high prices.

In a city where real estate prices and rents are rising quickly, many long-term residents are finding

themselves pushed out of their homes. Rent control is not simply a question of keeping tenants in their apartments; rather, it has become a question of the right of long-time New York City residents to stay in the neighborhoods they have called home for upwards of four decades. The rent control struggle has become just one front of many in the fight to keep New York City livable for a diversity of residents. “I think rent control is the main factor in allowing people to stay in Manhattan,” one rent controlled tenant and long-time New Yorker shares. “If I didn’t have rent control, I wouldn’t be able to stay in the metropolitan area.”

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Many rent controlled tenants have been living in their apartment for decades and have seen their neighborhood go through tremendous changes. Tenants who live in areas which now are some of the city’s most expensive neighborhoods remember a time when rents were low, but crime rates and safety were a constant problem. Now, these tenants who have seen their neighborhoods through many decades, who stayed through the years when their neighborhoods were less desirable, are being driven out.

“You know, for a long time, people did not want to live in my neighborhood, because they were concerned about the crime we had to deal with here. We had to be very careful on the street and when entering the building, and many apartments were broken into, including my own – three times,” one rent controlled tenant says of her neighborhood. “Now, of course, my neighborhood is very desirable. This is the story of New York City, isn’t it?”

Many rent controlled tenants share the same fear: without their rent controlled apartment, they don’t know where they would live. Many rent controlled tenants are long-term residents with no desire to move out of their homes and their city, though they face that possibility with each rent increase.

Solutions

In response to the above stated issues and challenges with the rent control system, the New York State Tenants & Neighbors Coalition and its rent control leadership committee has developed a legislative strategy to reform the system and increase the chance that rent controlled tenants can stay in their apartments. As one rent controlled tenant sees it, “there has not been enough of a cry out from us, or legislators. In our age group, we are sort of forgotten, which doesn’t seem right. Somebody has got to do something to bring pressure to the system.” Our suggested solutions are:

Abolish the Maximum Base Rent system and place rent increases for rent controlled tenants under the Rent Guidelines Board

The process by which the Maximum Base Rent is decided each year accepts little outside input, opting instead to use a statutory formula to calculate what rents should be for rent controlled tenants. This system often results in rent controlled tenants paying a higher percentage rent increase than rent stabilized tenants. Any rent adjustments for rent controlled tenants should be determined by the Rent Guidelines Board (RGB) so tenants can have input into the process. In addition to moving the MBR system to the RGB, we

propose an end to the fuel and labor pass-along charges that rent controlled tenants pay. This will eliminate an additional cost that tenants are forced to factor into their limited budget.

Increase the income threshold for the Senior Citizen Rent Increase Exemption Program

We also suggest that the eligibility for the SCRIE program be expanded to include more rent controlled tenants. Specifically, we believe that Social Security payments should not be counted as income for the purpose of determining eligibility for SCRIE. If this change were made, many more rent controlled tenants who are struggling to get by would be able to access the program, hugely increasing the chance that they will be able to continue to afford their apartment.

Conclusion

Though the number of rent controlled tenants numbers may not be high compared to tenants who live in other types of subsidized and rent regulated housing, their plight embodies one of the basic questions of housing in this ever-crowded and increasingly expensive city: who should stay in our cities? Do people have the right to stay in communities where they have a long history? What is the value of keeping people in their neighborhoods? As market rents around them have increased dramatically, the current rent control protections cannot shield tenants from rents that are climbing to unsupportable levels. Protecting the rights of rent controlled tenants takes a stand for the rights of New Yorkers who have called this city home for decades, and who we believe have the right to stay in their apartments and neighborhoods.