

## **Major Changes to the New York Rent Regulation Laws: The Statewide Housing Security and Tenant Protection Act of 2019**

**By John Dolgetta, Esq.**

On June 14, 2019, Governor Cuomo signed into law the controversial Statewide Housing Security and Tenant Protection Act of 2019 (the “2019 Act” or “Act”) [*see* <https://bit.ly/2xA6lth>]. The Act went into effect immediately and it significantly modifies and expands the existing rent regulations. The Act changes both the legal and business landscape in the New York real estate market in significant ways.

### **Rent Control v. Rent Stabilization**

In New York, there are two rent regulation programs currently in effect: “Rent Control” and “Rent Stabilization.” These laws were enacted to protect tenants from excessive rent increases and to deal with housing shortages. At the same time, these regulations were intended to allow owners to realize a reasonable profit and allow for reasonable increases so that owners could recuperate certain operating expenses and improvement costs.

### **What is Rent Control?**

The Emergency Housing Rent Control Law was enacted in 1946 (the “1946 Act”), due to the housing shortage immediately following World War II. Rent Control laws generally apply to residential buildings constructed before February 1947. According to the New York City Rent Guidelines Board “[a] total of 51 municipalities have rent control, including New York City, Albany, Buffalo and various cities, towns, and villages in Albany, Erie, Nassau, Rensselaer, Schenectady and Westchester counties.” Rent control also applies to “...buildings that receive J-51 and 421-a tax benefits.” [*See* N.Y.S. Division of Housing and Community Renewal Office of Rent Administration, Fact Sheet #1 at <https://on.ny.gov/2xDOMso>]. The Division of Housing and Community Renewal (“DHCR”) is the agency in charge of enforcement and implementation of the rent regulation laws.

### **The ETPA and Rent Stabilization**

In 1974, the Emergency Tenant Protection Act (the “ETPA”) was enacted to further deal with the housing problems of the era and provided additional protections for tenants and placed added restrictions on landlords. Under the ETPA, the “Rent Guidelines Boards” (“RGBs”) are responsible for setting rent adjustments for rent stabilized apartments. In NYC, rent stabilized apartments are generally those apartments in buildings of six or more units built between February 1, 1947 and January 1, 1974. Tenants in buildings of six or more units built before February 1, 1947 and who moved in after June 30, 1971 are also covered by rent stabilization.

### **The 2019 Act**

The 2019 Act revises, extends and makes permanent many of the existing rent regulation laws, including the ETPA, which was set to expire on June 15<sup>th</sup>. While tenants should receive certain protections, the 2019 Act will inevitably impact landlords and the real estate market as a whole. In a Wall Street Journal article, several brokers and investors reported that “[t]he new laws

could cause the values of rent-stabilized apartment buildings to drop 20% to 45%, depending on their current rent rolls.... That would leave many properties worth less than their mortgages and put building owners at risk of default.” [See article at <https://on.wsj.com/2N7FTSv>]. Below are highlighted several major changes under the new law.

### **The Repeal of “High-Rent Vacancy Deregulation” & “High-Income Deregulation”**

Two major changes introduced by the 2019 Act is the repeal of the “High-Rent Vacancy Deregulation” and the “High-Income Deregulation”. Previously, the law allowed apartments to become completely decontrolled upon vacancy if the rent for a particular apartment reached certain levels set by the RGBs, which, for example, for 2019, was \$2,744 in NYC and \$2,830.21 in Westchester. The 2019 Act also repealed provisions which allowed for decontrol based on income levels (i.e., where tenants earn more than \$200,000 per year for more than two years). These changes will keep apartments under rent control indefinitely, significantly limiting a landlord’s ability to operate the properties at a profit, while benefitting those tenants who are economically capable of paying higher rents.

### **Recordkeeping and “Look-Back” Periods Extended; Statute of Limitations Period Eliminated; and Treble Damages**

The Act also eliminates the statute of limitations periods. Previously, if a tenant did not file a claim “...within four years of the first overcharge” no award would be permitted. Now, a tenant may file a claim or action “at any time,” regardless of when the overcharge occurred, but would limit any recovery to “...the six years preceding the complaint.” Corresponding changes were made to the recording-keeping periods, which have also been extended from four to six years.

Regarding the assessment of treble damages against landlords, previously, if a landlord voluntarily refunded any overcharge back to a tenant the landlord could avoid treble damages. In addition, treble damages were not permitted for any overcharges that extended beyond two years from the date a claim was filed, or where a landlord simply failed to file an initial or annual rent registration statement. The 2019 Act eliminates all of the above and provides that “[a] penalty of three times the overcharge *shall* [emphasis added] be assessed upon all overcharges willfully collected by the owner starting six years before the complaint is filed.” [See 2019 Act, Part E, Page 10 at <https://bit.ly/2xA6lth>].

### **The ETPA Now Applies Throughout New York State**

The Act now expands the ETPA to *all* counties and municipalities in New York State and not solely to New York City, and Westchester, Nassau and Rockland Counties. Any county, town or village may now opt into the ETPA upon a declaration of a housing emergency. Once an emergency is declared a RGB having nine members as provided for in Part G must be created. [See Part G, Page 16 at <https://bit.ly/2xA6lth>].

### **Limitations on Permitted Increases, Fees and Fuel Cost Pass-Alongs**

The Act restricts a landlord from “...collect[ing] an increase from a tenant in occupancy in any one year period of more than the *lesser* [emphasis added] of either seven and one-half (7.5%) percent or an average of the previous five (5) years of one-year rent adjustments on rent stabilized

apartments as established by the rent guidelines board.” The new law also prohibits landlords from passing along fuel costs to the tenant. Landlords, attorneys and real estate licensees should be aware of this. [*See* Part H, Page 19 at <https://bit.ly/2xA6lth>].

### **Reduced Increases Relating to Major Capital Improvements & Individual Apartment Improvements**

Previously, landlords were permitted to increase rent based on certain capital improvements made to the entire building, known as “Major Capital Improvements” (“MCIs”), as well as other improvements made to individual apartments, known as Individual Apartment Improvements (“IAIs”). The Act introduces dramatic reductions in the rates of rent increases based permitted for these types of improvements. [*See* Part K, Page 23 at <https://bit.ly/2xA6lth>].

In connection with MCIs, the 2019 Act limits any rent increase to two (2%) percent throughout New York State. This represents a significant reduction from the previous rates of six (6%) percent permitted in New York City, and fifteen (15%) percent allowed in other ETPA counties. Previously, any of the increases approved in connection with MCIs were permanent, however, they now terminate after 30 years. DHCR will “...establish a schedule of reasonable costs for major capital improvements, which shall set a ceiling for what can be recovered.” The Act completely prohibits any MCI increase for buildings that have 35% or less rent regulated apartments. The new law also provides for an annual audit and inspection process.

In connection with IAIs, landlords were previously permitted to increase rents in order to allow them to collect a percentage of the *total* cost of a renovation. Now, landlords may only collect a much smaller portion of the total renovation cost, now capped at \$15,000 over a fifteen (15) year period. Similarly, the increases terminate after 30 years. IAIs will also be subject to random annual inspections and audits.

### **Increased Legal Requirements of Landlords and Additional Tenant Protections Affecting Non-Rent Regulated Properties**

The new law also makes significant changes with respect to non-rent regulated properties. The Real Property Actions and Proceedings Law (“RPAPL”) has been amended to add Section 702 which defines “rent” in a residential dwelling as the monthly or weekly amount charged to a tenant, and specifically *excludes* any additional fees from the definition. Therefore, in an eviction proceeding a landlord may not collect any additional fees or charges other than “rent,” regardless of what may be included in a lease agreement, except as may be specifically permitted under the law. Additionally, effective as of October 12, 2019, landlords will be required to provide written notice of rent increases greater than 5% or of an intention not to renew tenancy in accordance with the following schedule:

- If tenant has occupied for less than 1 year and does not have a lease term of at least 1 year, landlord shall provide at least 30 days’ notice.
- If tenant has occupied for more than 1 year, but less than 2 years, landlord shall provide at least 60 days’ notice.
- If tenant has occupied for more than 2 years or has a lease term of at least 2 years, landlord shall provide at least 90 days’ notice.

The 2019 Act now creates a duty for the landlord to reasonably mitigate damages, in the event that the tenant vacates a premise in violation of the terms of a lease. Additional requirements and restrictions enacted under the Act cover the following topics:

- Prohibition against application fees and limitations on fees for credit or background checks (i.e., the actual cost of the credit or background check or \$20, whichever is less).
- Waiver of fees for background or credit check if the tenant provides a recent report.
- Limitation on late fees (i.e., not to exceed lesser of \$50 or 5% of the monthly rent).
- Extensive changes to the existing retaliatory eviction law (e.g., penalties ranging from \$1,000 to \$10,000 for unlawful evictions).
- Extension of time periods for tenants to pay rent owed, fix lease violations, obtain legal counsel, and find new housing.
- Cancellation of legal proceedings upon payment of outstanding rent by tenant to the landlord or the court at any time during the process.
- Courts are provided with expanded circumstances to consider hardships and stays of eviction proceedings for longer periods.
- Landlords prohibited from recovering legal fees in the case of a default judgement.
- Landlords prohibited from collecting a security deposit of more than one month's rent for all types of residential dwellings (e.g., including one to four family residences).
- Tenants' right to conduct a walk-through inspection at the commencement and expiration of the lease term.
- Landlords to provide itemized statements within 14 days after the tenant vacates.
- Landlords liable for punitive damages of up to twice the amount of the security deposit for any violation.

### **The Effects of the New Law**

The changes introduced by the 2019 Act will dramatically affect all landlords and not just those who own rent regulated properties. The new law will increase a landlord's costs while reducing a landlord's ability to charge fair and reasonable rents. The new laws may cause some owners to sell or walk away from their properties altogether. While the objective of this new legislation, to afford tenants additional protections, is laudable, it will inevitably cause landlords to invest less in their properties which will ultimately harm tenants. There needs to be a balance struck between assisting those in need and allowing the free market to operate.

\* \* \* \*

Legal Column author John Dolgetta, Esq. is the principal of the law firm of Dolgetta Law, PLLC. For information about Dolgetta Law, PLLC and John Dolgetta, Esq., please visit <http://www.dolgettalaw.com>. The foregoing article is for informational purposes only and does not confer an attorney-client relationship.