November 9, 2009

Position on Statute of Limitations

<u>Background</u>

The issue of a statute of limitations is the formative issue of the rent control ordinance in Hoboken. In 2005 the City Council took up the issue of a statute of limitations and had a first reading on a two-year statute. By all accounts, the law was abandoned due to political pressure from tenants. In the intervening time, the lack of a statute has resulted in a challenge to the validity of record keeping in Hoboken, which in turn resulted in a finding that the application of the ordinance was arbitrary and capricious.

The fact is, the maximum statue of limitations is 6 years, including on rent control issues in Hoboken. The problem is that the 6 years runs from the discovery of an illegal rent. Thus a tenant can be in residence for 30- years and never "discover" that a rent has been overcharged. Because of the flip-floppy administration of the law, there is no means of establishing a legal rent in rent controlled properties, and therefore the owner has a "ticking time bomb" scenario within their tenancies.

The statute of limitations issue, therefore, is actually a statute of repose issue: how long should a tenant have to discover that the rent being charged is illegal?

<u>Process in Hoboken's Rent Leveling Office</u>

Hoboken's corrupted record system complicates this issue beyond a simple solution, but let's being by observing the dynamic of renting an apartment:

a) the tenant knows the rent from the first day;
b) the tenant has a legal right to a legal rent calculation the first day.

A cynical person might observe that it is in the tenant's interest to stay in the apartment as long as possible prior to "discovering" that they could be overcharged on their rent, because a trebling of damages in the consumer fraud statute rewards them geometrically for the passage of time.

The owner's dynamic is:

a) no matter what his record keeping has been, he is subject to being found not in compliance with the ordinance simply because he has not filed a form that was not available or accepted according to testimony by the two most recent rent leveling administrators in town;
b) the owner still is required to file rent registrations for buildings, but these are not certified by the rent leveling office.

Solutions

To balance the equities in this ordinance, the town needs to balance the regulatory obligation of the owner with the good faith of the tenant. Because the tenant can request a rent calculation at any time and discover overcharging, there should be a maximum tenancy under which they may request the calculation. This statute of repose removes the motivation of the tenant to exploit the gaps in administration of the rent control office and it limits the prospective exposure to the owner.

However, this statute of repose would be moot if the rent leveling office administered rents affirmatively rather than in reaction to contests. The record keeping already has been ruled arbitrary and capricious, and so no attempt to generate a finding against an owner of consumer fraud is likely because the evidence is corrupt. A rent leveling ordinance that requires the city administer rent registrations and certify rents at the outset of the lease is the most practical orientation of the ordinance, as we have previously argued. Beyond that moment, however, it is acknowledged that other frauds could occur, and a two-year statute of repose would be effective in motivating tenants to discover them.

Further, and again we repeat earlier submissions, a new base year also is a solution to the issue of obviating constitutional problems relating to the current ordinance and its administration. Rather than extend needlessly litigation over rents that can now not be deemed illegal due to corruption of records, we recommend that a new base year of 2007 be enacted. This will work productively in conjunction with a two-year period of repose and an affirmative rent registration in Hoboken -- over two years it would flush out all illegal rents and thereafter prevent most illegal rents from being set.

October 19, 2009 (originally scheduled)

Position on Disclosure Forms/Vacancy Decontrol Forms/ Certificate and Filing Fees

Background

This meeting topic seems to be a catch-all that should better have been titled "non-sense that goes on in Hoboken and nowhere else."

Process in Hoboken's Rent Leveling Office

The problems with the Hoboken Rent Leveling Ordinance are apparent through the specter of tonight's topic: we are discussing issues that are not part of the Ordinance, but are operating processes of the Hoboken Rent Leveling Office.

Mile Square Taxpayers Association has two sets of positions relative to processes of the rent leveling office:

1) any action of the rent leveling office that is taken that is not in strict conformance to the ordinance is inconsistent with good government and prospectively ultra vires. The Council has had ample opportunity and many requests to alter the ordinance, and it is expected that the Council will do so as a result of these hearings.
2) The processes in the Rent Leveling Office have been cobbled together under different leadership and have been found to be unconstitutional as applied by a Superior Court Judge. It is our position that virtually every requirement that has been implemented by the Rent Leveling Office would similarly be found unconstitutional as applied.

MSTA has observed that the Mayor's office has every right to direct the operations of the Rent Leveling Office in a manner that is consistent with the Ordinance. Instead, the Mayor's office and the Council have left it to the Courts to determine the legality of the procedures in the Rent Leveling Office and have left it to the Rent Leveling Board to hear matters related to process. The Rent Leveling Attorney and the Rent Leveling Officer, variously, have implemented procedures that have complicated the administration of the rent leveling office and rendered the Ordinance arbitrary and capricious.

Solutions

1. No vacancy decontrol form was required, accepted or even developed under the first three rent leveling officers. The form itself is unknown to many real estate owners as a result of the Ordinance not being enforced. The form was replaced

by the practicality of the rent leveling officer accepting rent registration statements, and utilizing prior leases as a the stepping stone to legal rent calculations.

2. Disclosure forms and certificates are not necessary when the Rent Leveling Ordinance is administered at the moment of the lease signing in the form of a validation of the lease.
3. Filing fees for rental registration should be required, and possibly increased, based on: a) the rent leveling office being run on a computerized database from which true data that has not been corrupted by poor record keeping allows rent histories to be observed; b) a validation that a rent is legal prior to the lease being entered.
4. Such activity necessitates a new base year and a registration campaign that would include stiff penalties for non-registration. The new base year cannot be any year prior to 2006, because records in the office have been deemed unreliable by a Superior Court Judge in that regard. Any valid lease entered beyond 2006 should be considered a legal basis for a rent. This also is consistent with a normal statue of limitations for business fraud of 2 years.