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The City Council Rent Control and Affordable Housing Committee

Re: Rent control recommendations

Dear Council Members:

I attended most of the meetings held over the last several months, and have the following comments and recommendations.

The Hoboken Rent Control ordinance is in need of major change. The ordinance itself, as well as the way it has been administered over the years, has caused major inequities to many property owners.

HISTORY

The system relies on paper filings dating back to 1981, when rent registration statements were first required (though many landlords did not file them). The files are maintained in the Rent Office in manila folders, one for each building, with all documents loose, not even held in binders. When one considers that these files have been in existence for nearly thirty years, it would not be surprising to find that some documents have been lost or misplaced; indeed, it is not uncommon to find in one file a document that belongs in another. When the Rent Officer performs a "legal rent calculation," she relies solely on the documents in these files. Since their integrity clearly has not been maintained, the system is obviously unsound and unreliable. A missing vacancy decontrol certificate means a difference in legal rent of 25%; thus mis-filings and lost documents are potentially extremely costly to landlords.

The system is further flawed by the fact that for many years the City did not enforce the ordinance requirements for annual registration statements and vacancy decontrol certificates. When a tenant requested a "legal rent calculation," the Rent Officer - Sheila Butler, then Carol McLaughlin - sent a letter to the landlord inviting him/her to submit documents in support of the rent being charged. The landlord would then meet with the Rent Officer, present leases and other documentation of the rent history, and the Rent Officer would approve the vacancy decontrol increases, *irrespective of whether the registration statement and vacancy decontrol certificates had been filed.*

This practice continued until the mid-1990's, when a tenant brought a court action challenging Carol McLaughlin's approval of vacancy decontrol increases where registration statements had not been filed. The court disallowed the increases, holding in effect that the filing of registration statements was a pre-requisite to the increase. After that decision Ms. McLaughlin indicated that she would accept back-dated registration statements, and many landlords filed them for the years between 1985 and that date.

At some point Ms. McLaughlin indicated that she did not want the vacancy decontrol certificates filed (and on some occasions refused to accept them), since she did not need them; she could tell from the registration statements when there had been a turnover where a 25% increase would be allowed. However, in a 2005 court case, *Lewis v. Hoboken*, it was held that the filing of a vacancy decontrol certificate was a prerequisite to a 25% increase.

In short, recent court decisions have held that if the ordinance was not followed to the letter, and every piece of paper filed in a timely manner whether the Rent Officer required it or not, vacancy decontrol increases are not allowed. The courts have held:

1. The six-year statute of limitations for contract actions does not apply; property owners are liable for the duration of the tenancy, no matter how long.
2. The Consumer Fraud Act applies, meaning that damages are tripled.
3. Current owners are liable for overcharges that took place before they owned the buildings (though not for treble damages).
4. Owners who relied on statements from the Rent Officer as to the legality of rents are not relieved from having to pay back overcharges for rents later determined to be excessive.

Landlords are now left unable to comply and face huge potential liabilities.

RECOMMENDATIONS

1. Legal Rents

The new law should legitimize the past practices of the Rent Officer and Board by providing that all documents filed by landlords and accepted by the Rent Officer, as well as all opinions, findings of "legal rents" and "updates" by the Rent Officer and/or Rent Board that have not been challenged within two years after filing or issuing, are legitimate.

In addition, there should be a period of amnesty to allow landlords to file post-dated registration statements and vacancy de-control certificates where he/she can show supporting documentation. Fairness demands this in light of the past practices.

2. Statute of Limitations

There should be a time limit for the tenants' recovery of past overcharges. Two years seems reasonable.

3. Capital improvement increases

The current ordinance requires inspection of each apartment. This is time-consuming, cumbersome and expensive. Increases should be allowed provided there are no violations outstanding on the building. The increases should be spread over a number of months or years, up to ten years, and interest should be allowed. Otherwise, there is no incentive for landlords to make improvements.

4. Hardship increases

The basis for the property should be cost of the building plus anything spent on improvements, plus carrying cost of purchase money mortgage and mortgages where funds are used for improvements.

5. Vacancy decontrol

The current 25% is insufficient. In many cases, tenants have been in place for decades, and rents are less than \$500 per month. The apartments, when they become vacant, are in need of major repairs. Full vacancy decontrol should be allowed where apartment is brought up to code.

6. Cost of living increases

New York City performs exhaustive calculations each year to determine this increase. The new law should simply adopt the New York City amounts.

Respectfully submitted,

Mark L. Villamar