

# EASING EVICTIONS: THE NEED FOR MEDIATION AND FORMAL EVICTION GUIDELINES BETWEEN NEW YORK CITY LANDLORDS AND RENT-STABILIZED TENANTS

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## I. INTRODUCTION

Rental prices across Manhattan, Brooklyn, and Queens reached a new all-time high in 2022, and prices do not appear to be dissipating any time in the near future.<sup>1</sup> The recent surge of the outrageous rental market stems from several factors: lack of inventory, rising mortgage rates, peak season, and the Housing Stability and Tenant Protection Act, creating new protections against tenant evictions.<sup>2</sup> In the post-pandemic era especially, New York apartment rents increased substantially, as those who “received a ‘COVID discount’ are now paying the price for those deals” and landlords are demanding huge sums for their units.<sup>3</sup> New York City even topped the list as the most expensive market for one-bedroom apartments, with prices rising a whopping 41% from last year and 5% in July 2022 alone.<sup>4</sup>

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<sup>1</sup> Mary K. Jacob, *NYC’s Real Estate Rental Market Has Reached a Shocking Point*, N.Y. Post (Aug. 3, 2022), <https://nypost.com/article/where-nyc-real-estate-rental-market-stands-right-now-housing-prices/> [<https://perma.cc/WH6B-ER29>].

<sup>2</sup> *Id.* The Housing Stability and Tenant Protection Act of 2019 established the strongest protections for New York tenants in years. This act extends and makes rent regulation laws permanent, in addition to dozens of other provisions.

<sup>3</sup> Ronda Kaysen, *New York Renters Are Now Paying the Price for the ‘Covid Discount’*, N.Y. TIMES (July 26, 2022), <https://www.nytimes.com/2022/07/26/realestate/nyc-apartments-covid-discount.html> [<https://perma.cc/FMN2-CJAA>].

<sup>4</sup> Martine Paris, *These Are the Most Expensive US Cities for Renters, With Some Prices Up 41%*, BLOOMBERG (July 26, 2022), <https://www.bloomberg.com/news/articles/2022-07-26/these-are-the-most-expensive-cities-for-renters-led-by-nyc-and-sf> [<https://perma.cc/6GH3-XZSW>].

Although there has been an abrupt increase in rental prices in recent months, the existence of rent-stabilized and rent-controlled apartments resulting from New York City's rent-regulation system act as critical components of the city's dwindling affordable housing stock.<sup>5</sup> To bring matters into perspective, out of roughly 3,644,000 homes in New York City, the approximately 1,006,000 rent-stabilized homes make up around 28% of the overall housing stock and 44% of all rentals.<sup>6</sup> In addition, about 16,400 homes are rent-controlled.<sup>7</sup>

New York's rent-regulation system has been in place for decades. However, landlords often suffer from the low prices that rent-regulated tenants pay, make little to no profit from their properties, are no longer able or willing to make repairs, ultimately leaving them yearning to evict these tenants.<sup>8</sup> For rent-regulated units, landlords cannot charge rent at its market value and cannot improve properties unless they are satisfied with contributing a significant amount of money towards renovating a unit that will not bring in the income that it otherwise would.<sup>9</sup> Even if a landlord renovates and updates a unit with, for example, new appliances, it must remain rent-regulated by law.<sup>10</sup>

As a general trend in the New York City real estate industry, landlords often try to evict rent-stabilized tenants from their rental units with the goal of either renovating their building to implement structural changes, update appliances, etc., or demolishing their existing building to construct a high rise with more units at higher price points.<sup>11</sup> While landlords are often incentivized to create rent-stabilized units due to 421-a tax exemptions, they are consequently enticed by the thoughts of: (i) refraining from listing their rent-stabilized units, as rents have been driven to an astronomical level and landlords cannot list these units at market price even if they invest in significant upgrades; and (ii) demolishing their small, rent-stabilized

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<sup>5</sup> Ilaria Parogni & Mihir Zaveri, *Understanding Rent Regulation in N.Y.C.*, N.Y. TIMES (June 22, 2023), <https://www.nytimes.com/2022/06/22/nyregion/rent-regulation-new-york.html> [<https://perma.cc/6TZC-NRYB>].

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Caleb Malik, *Rent Control Is Bad for Both Landlords And Tenants*, MKT. URBANISM (Apr. 2, 2016), <https://marketurbanism.com/2016/04/02/rent-control-bad-landlords-tenants/> [<https://perma.cc/GHC6-WSXM>].

<sup>9</sup> *Id.*

<sup>10</sup> Melvin Monachan, *What Are the Pros & Cons of New York's Rent Control Laws?*, MELVIN MONACHAN (Mar. 20, 2020), <https://www.monachanlaw.com/what-are-the-pros--cons-of-new-yorks-rent-control-laws> [<https://perma.cc/YTP9-RYAY>].

<sup>11</sup> Alcynna Lloyd, *Why Some NYC Landlords Keep the Apartments You Can Actually Afford Off the Market*, BUS. INSIDER (July 10, 2022), <https://www.businessinsider.com/why-cant-find-affordable-nyc-rent-controlled-regulated-vacant-apartments-2022-7> [<https://perma.cc/C2EU-8ZYY>].

tenements in hopes of constructing a taller, more money-generating high-rise development which would allow for a surplus of housing.<sup>12</sup>

New York City already has guidelines and laws regarding the issue of landlords planning to demolish certain buildings consisting of rent-stabilized units. For instance, landlords who intend to demolish their buildings can attempt to negotiate with tenants, offering to pay off the tenants or award them a stipend.<sup>13</sup> Tenants may choose to fight the proposed demolition plan at the Division of Housing and Community Renewal (“DHCR”), often incentivizing landlords to offer bigger payments.<sup>14</sup> Additionally, the legal system provides a means for landlords to evict tenants for nonpayment of rent or other lease violations.<sup>15</sup> However, the process is often slow, adversarial, and expensive, with little opportunity for the parties to come to a mutually acceptable resolution. Neither receiving a stipend nor fighting the demolition plan at the DHCR or in court typically results in merited and suitable settlement for the parties.<sup>16</sup>

Offering tenants a stipend or bringing the case to the DHCR is typically confusing, time-intensive, and inadequate ways of resolving these housing disputes. First, as Sam Himmelstein, a lawyer with the firm Himmelstein, McConnell, Gribben Donoghue & Joseph stated, “[s]tipends are often completely inadequate.”<sup>17</sup> For cases heard at the DHCR, the proceedings often take five to six years to resolve and cost both the landlord and the tenant a significant amount of money.<sup>18</sup> While cases may be settled via housing court or negotiation, the outcome of these cases often leaves both parties at a disadvantage. The landlord and tenant likely end up spending a notable amount of time and money in efforts of reaching a solution. Likewise, one side is typically left at even more of a disadvantage than the other, as the landlord either cannot knock down his existing building due

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<sup>12</sup> *Id.* See also *421-a & Rent Stabilization Tenant Fact Sheet*, N.Y.C. DEP’T HOUS. PRES. & DEV., <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/421-a-tenant-fact-sheet.pdf> [https://perma.cc/9E9J-Y7KL] (last visited Nov. 14, 2022) (“421-a refers to a section of the New York State Real Property Tax Law that exempts certain new multiple dwellings from local property taxation. These laws are, or have been, adopted by the New York State and City Legislatures and are designed to incentivize developers to build multiple dwellings, in exchange for partial tax benefits over a certain period of time. In particular, because of the tax benefit, rental apartments are often subject to rent-stabilization, usually also only for a certain period of time.”).

<sup>13</sup> Himmelstein McConnell Gribben & Joseph LLP, *Ask Sam: Do Landlords Have to Relocate Tenants When They’re Demolishing the Building?*, BRICK UNDERGROUND (May 12, 2021), <https://www.brickunderground.com/rent/demolition-rent-stabilized-buyout-relocation-landlord-nyc> [https://perma.cc/5TDL-2FXE].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

to the circumstances of the tenant's rent-stabilized unit or the rent-stabilized tenant must move out of their lifelong home.

Although there are several methods for landlords to evict rent-stabilized tenants, there are no formal guidelines for this process, and mutually beneficial agreements are rarely reached. This Note will begin with an in-depth discussion of the background of rent-stabilization in New York City and how tenants who refuse to leave their rent-stabilized units can destroy a landlord's vision of demolishing the building to construct a high-rise, maximize profits from their property, and expand New York City's housing supply. After the Introduction and Background sections, the Discussion section will detail why current eviction regulations are unsatisfactory, and will delve into illegal eviction practices, the need for formal guidelines regulating the eviction of rent-stabilized tenants, and the benefits of landlords constructing new buildings to all parties involved, including New York City residents in general. Lastly, the Proposal section will suggest a unique solution to resolve the rent-regulated eviction debacle: the use of mediation as a tool to help landlords evict rent-stabilized tenants in a mutually beneficial manner to construct high-rises, improve their buildings, and increase the housing supply. This Proposal section will explore why landlords and tenants especially warrant mediation, the benefits of mediation generally and in housing disputes, potential obstacles for an eviction-based mediation program, and ultimately, the details of my proposed mediation system.

## II. BACKGROUND

### A. *The History of Rent-Controlled Units in New York*

The terms "rent-control" and "rent-stabilized" are often used interchangeably, but there are several notable differences between the two.<sup>19</sup> The term "rent-control" limits the rent that a landlord may charge a tenant for an apartment unit and presents the owner with limits regarding their rights to evict tenants.<sup>20</sup> Rent control programs apply to residential buildings constructed prior to February 1947 in municipalities that have not yet declared an end to the post-war rental housing emergency.<sup>21</sup> Rent

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<sup>19</sup> Nathan Miller, *Rent Control Versus Rent Stabilization: What It All Means for Landlords*, FORBES (May 28, 2021), <https://www.forbes.com/sites/forbesrealestatecouncil/2021/05/28/rent-control-versus-rent-stabilization-what-it-all-means-for-landlords/?sh=2cbfa84316fc> [https://perma.cc/69D7-GHHM].

<sup>20</sup> Eric T. Schneiderman, *Tenants' Rights Guide*, ST. N.Y. ATT'Y GEN., [https://www1.nyc.gov/assets/buildings/pdf/tenants\\_rights.pdf](https://www1.nyc.gov/assets/buildings/pdf/tenants_rights.pdf) [https://perma.cc/KKH9-6YDM] (last visited Oct. 15, 2023).

<sup>21</sup> *Id.*

control remains prevalent in New York City as well as parts of Albany, Erie, Nassau, Rensselaer, Schenectady, and Westchester counties.<sup>22</sup>

In order for an apartment to be considered rent-controlled, the tenant or the tenant's lawful successor must have been living in the unit continuously since before July 1, 1971.<sup>23</sup> When a rent-controlled apartment is vacated in New York City or other localities, it becomes rent-stabilized or removed from regulation entirely.<sup>24</sup> Rent-controlled apartments in New York City have a maximum base rent which adapts every two years to reflect changes in operating costs.<sup>25</sup> If tenants choose to dispute rent increases by filing a complaint with the Office of Rent Administration, they may do so if the price instilled by the landlord exceeds the legal regulated rent, the building violates the housing code, the owner's expenses do not warrant an increase, or the owner is not maintaining essential services.<sup>26</sup> Lastly, rent-control typically locks in rental rates at a specific amount.<sup>27</sup>

### B. *The History of Rent-Stabilized Units in New York*

Rent-stabilization, on the other hand, is more common than rent control and allows for the state or local government to increase one's rent by a fixed amount.<sup>28</sup> As long as one is able to find a rent-stabilized unit, anyone in New York has the ability to rent a rent-stabilized apartment, even if they qualify for market-rate rents.<sup>29</sup> Rent stabilized tenants are entitled to required essential services—repairs, heat, hot and cold water, maintenance, etc.—and lease renewals, but they can only be evicted on legal grounds.<sup>30</sup> The legal grounds for evicting rent-stabilized tenants are more limited than the typical grounds a landlord must go about to evict a typical

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> Eric T. Schneiderman, Tenants' Rights Guide, St. N.Y. Att'y Gen., [https://www1.nyc.gov/assets/buildings/pdf/tenants\\_rights.pdf](https://www1.nyc.gov/assets/buildings/pdf/tenants_rights.pdf) [<https://perma.cc/KKH9-6YDM>] (last visited Oct. 15, 2023). See also *Rent Increases and Rent Overcharge*, N.Y. St. <https://hcr.ny.gov/rent-increases-and-rent-overcharge> [<https://perma.cc/4C69-H2XQ>] (last visited Nov. 14, 2022).

<sup>27</sup> Miller, *supra* note 19.

<sup>28</sup> *Id.*

<sup>29</sup> Ruth Shin, *What Is A Rent-Stabilized Apartment in New York?*, PROPERTYNEST (Feb. 21, 2023), <https://www.propertynest.com/blog/rent/what-rent-stabilized-apartment-new-york/> [<https://perma.cc/BK48-764C>].

<sup>30</sup> Schneiderman, *supra* note 20; See also *Living Conditions and Essential Services*, N.Y. St., <https://hcr.ny.gov/living-conditions-and-essential-services> [<https://perma.cc/GR3S-6RKL>] (last visited Nov. 5, 2023).

tenant, as these tenants may only be evicted for non-payment of rent, violations of the lease, causing a substantial disturbance to neighbors, or if the landlord intends to use the apartment for his or her family.<sup>31</sup>

In the past, owners were able to deregulate any rent-stabilized unit with a monthly rent of \$2,500 per month once it became vacant.<sup>32</sup> More specifically, occupied apartments became deregulated when the legal regulated rent reached \$2,500 or more and the tenant's total annual income exceeded \$200,000 per year the two years prior to the deregulation.<sup>33</sup> Once a tenant's unit became deregulated through these means, landlords could be offered a rent at the prevailing market rate.<sup>34</sup> Additionally, owners of rent-stabilized apartments were also awarded up to a twenty percent bonus to the legal rent in between tenancies.<sup>35</sup> However, as of June 14, 2019, owners can no longer remove a unit from rent stabilization after vacancy, even if the rent has reached a certain dollar threshold, and the bonus has been eliminated.<sup>36</sup> Instead, new tenant protection laws make evictions and rent increases more challenging.<sup>37</sup> For instance, rent increases must be based on the preferential rent with a few very narrow exceptions, as current guidelines set by the Rent Guidelines Board ensure that rent may increase 1.5% for a one-year lease and 2.5% for a two-year lease.<sup>38</sup>

Several guidelines determine whether apartments are rent-stabilized. Thus, apartments in New York City are generally under rent stabilization if they are: (i) in buildings of six or more units built between February 1, 1947 and December 31, 1973; (ii) in buildings constructed before February 1, 1947 with tenants who moved in after June 30, 1971; or (iii) in buildings with three or more apartments constructed or extensively renovated on or after January 1, 1974 with special tax benefits.<sup>39</sup>

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<sup>31</sup> Steven R. Sutton, *Rent-Stabilized Tenant Attorney*, L. OFF. STEVEN R. SUTTON, <https://www.suttonlaw.com/landlord-tenant-litigation/rent-stabilized-tenants/> [<https://perma.cc/NA2A-2UN8>] (last visited Oct. 15, 2023).

<sup>32</sup> Schneiderman, *supra* note 20.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *New Protections for Rent-Regulated Tenants*, N.Y.C. MAYOR'S OFF. PROTECT TENANTS, <https://www.nyc.gov/content/tenantprotection/pages/new-protections-for-rent-regulated-tenants> [<https://perma.cc/EJW5-9SJD>] (last visited Oct. 15, 2023).

<sup>36</sup> Gerald Lebovits, John S. Lansden, & Damon P. Howard, *New York's Housing Stability and Tenant Protection Act of 2019: What Lawyers Must Know*, 91 N.Y. ST. BAR J. 35 (2019).

<sup>37</sup> *Id.*

<sup>38</sup> N.Y.C. MAYOR'S OFF. PROTECT TENANTS, *supra* note 35.

<sup>39</sup> *Rent Stabilization and Emergency Tenant Protection Act*, N.Y. ST. HOMES CMTY. RENEWAL, <https://hcr.ny.gov/rent-stabilization-and-emergency-tenant-protection-act#:~:text=In%20>

### C. *Evicting Tenants in Rent-Stabilized Units*

Evicting tenants from rent-controlled or rent-stabilized units greatly differs from the typical eviction process, as the grounds for eviction are limited under rent stabilization.<sup>40</sup> Hence, evicting stabilized tenants can only occur under the following circumstances: (i) you are using your apartment as a non-primary residence; (ii) you have committed a “breach of tenancy”; (iii) you are being a nuisance; (iv) you are not paying rent; (v) the landlord wants your apartment for herself or her family; or (vi) the landlord plans to demolish the building.<sup>41</sup>

#### i. *When a Landlord Plans to Demolish a Rent-Regulated Building*

Many landlords believe that rent-regulation stifles new construction, halting their ability to demolish buildings that house rent-controlled and rent-stabilized units.<sup>42</sup> In the case that a landlord plans to demolish his or her building, the landlord may have the end goal of demolishing the building in order to build a new one, or to gut-renovate and reconstruct the interior. In these instances, the landlord must prove that they have the financial ability to do the work and that their plans have been approved by the city.<sup>43</sup> These proceedings are heard at the DHCR, and very few cases actually proceed to a hearing.<sup>44</sup> If the landlord prevails, the tenants can file an appeal within the DHCR, known as a Petition for Administrative Review (“PAR”).<sup>45</sup> This alone can take an additional two years to decide, and tenants can continue to pursue the issue with court challenges if the PAR is not decided in their favor.<sup>46</sup>

Real-life examples of landlords intending to demolish rent-regulated buildings creates a better understanding of the problems landlords face with eviction of these tenants. For instance, there was a recent case with a landlord who wanted to gut a townhouse, and

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general%2C%20rent%20stabilization%20in,also%20covered%20by%20rent%20stabilization [https://perma.cc/E3FZ-DQGM] (last visited Nov. 14, 2023).

<sup>40</sup> Himmelstein McConnell Gribben & Joseph LLP, *Ask Sam: What are the Rules for Evicting Rent-Stabilized Tenants in NYC?*, BRICK UNDERGROUND (Dec. 8, 2021, 1:30 PM), <https://www.brickunderground.com/rent/rules-for-evicting-rent-stabilized-tenant-nyc> [https://perma.cc/4GD6-CM3Y].

<sup>41</sup> *Id.*

<sup>42</sup> John W. Willis, *Short History of Rent Control Laws*, 36 CORNELL L. Q. 54 (1950).

<sup>43</sup> Himmelstein McConnell Gribben & Joseph LLP, *supra* note 40.

<sup>44</sup> *Id.*

<sup>45</sup> Himmelstein McConnell Gribben & Joseph LLP, *supra* note 13.

<sup>46</sup> *Id.*



he never offered more than \$300,000 to his tenants in exchange for them leaving the property.<sup>47</sup> According to Mr. Himmelstein, “our clients found that unacceptable, and the day before their hearing the landlord dropped his demolition plans. It took over two years for the DHCR to schedule a hearing. Those tenants remain in their stabilized apartments.”<sup>48</sup> Hence, as seen in this incident, rent stabilized eviction cases take years to resolve. They may also be costly and lack formal guidelines to guide landlords and tenants through the process. Likewise, tenants are entitled to certain stipends from the city if the landlord wins, which can vary based on the amount of rent they pay and how long they have been living in their apartment.

Besides DHCR hearings, tenants are sometimes able to negotiate buyouts deals in major cases. Take the experience of Raquel Cruz, a fifty-one-year-old Brooklyn resident, for instance:<sup>49</sup>

Cruz says she was offered \$10,000 and three months paid rent at a two-bedroom apartment “with a little skinny kitchen” on Quincy Street in Bedford-Stuyvesant, with a rent of \$1,300 a month, \$400 more than she was paying on Franklin Avenue. MySpace [a Brooklyn-based real-estate agency] also offered to pay for her moving costs and provide her with a permanent cleaning job . . . She knew that she would struggle to afford the \$1,300 a month rent, but she says she felt compelled to sign, pressured by the money and the fact that her neighbors were vacating.<sup>50</sup>

While Ms. Cruz’s case was cordial and mutually beneficial to both the landlord and the tenant,

[m]ore commonly . . . landlords will try to ‘lowball’ tenants, especially when they are not represented by an attorney in negotiations.<sup>51</sup> In fact, according to Legal Aid attorneys and housing advocates, some tenants complain that buyout offers amount to a mere ‘pittance,’ ranging from as low as \$2,000 to \$10,000.<sup>52</sup>

Correspondingly, tenants and their attorneys often think that the buyout offers are insufficient, causing the landlord’s ultimate demolition and new construction plans to fall through.<sup>53</sup>

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Louis W. Fisher, *Paying for Pushout: Regulating Landlord Buyout Offers in New York City’s Rent-Stabilized Apartments*, 50 *HARV. CIV. RTS. CIV. LIBERTIES REV.* 491, 497 (2015).

<sup>50</sup> *Id.* at 497; See also Vinnie Rotondaro & Maura Ewing, *The Ins and The Outs*, *NARRATIVELY* (Jan. 15, 2015), <https://www.narratively.com/p/the-ins-and-the-outs> [<https://perma.cc/CH38-AD9V>].

<sup>51</sup> Fisher, *supra* note 49.

<sup>52</sup> *Id.* at 497.

<sup>53</sup> *Id.*



### A. *Cost of Living in New York*

As rents are rising faster than ever, New Yorkers' average incomes are making it difficult for residents to afford adequate housing.<sup>54</sup> According to Senator Jessica Ramos, chair of the Senate Labor Committee, “[n]ow, more than two years into a pandemic-related economic crisis, rent, inflation, the cost of gas and groceries, and billionaires' wealth have all gone up. The only thing that hasn't kept pace is our wages.”<sup>55</sup> The cost of living in New York City is 26% higher than the state average and 95% percent higher than the national average.<sup>56</sup> Likewise, housing in New York City is 258% more expensive than the United States average, as utilities are 2% higher and both clothing and groceries cost 25% more than New York's United States counterparts.<sup>57</sup> In May 2020, rents reached a new milestone as the median rent soared to \$4,000.<sup>58</sup> For New Yorkers earning the city's median income of \$52,409 each year, New York's average rent comes amounts to around 92% of their pre-tax paycheck, which is far above what financial experts recommend budgeting for housing.<sup>59</sup>

### B. *The Demand for Rental Apartments in New York City Exceeds Supply*

Post-pandemic, America is facing a significant housing shortage with home ownership becoming diminishingly affordable.<sup>60</sup> While rental prices have increased across the nation, New York City specifically is one of the most expensive places in the United States and has deep-rooted issues.<sup>61</sup> Rents are hitting a new record every month,

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<sup>54</sup> Alcynna Lloyd, *Welcome to the Typical NYC Apartment: It Costs \$4,000 a Month and is Too Expensive for the Average New Yorker*, BUS. INSIDER (June 10, 2022, 7:45 AM), <https://www.businessinsider.com/nyc-average-apartment-rent-price-monthly-compared-median-income-2022-3> [<https://perma.cc/BQ9D-MWR4>].

<sup>55</sup> *Id.*

<sup>56</sup> *Cost of Living in New York City (November 2022)*, NY, RENTCAFÉ, <https://www.rentcafe.com/cost-of-living-calculator/us/ny/new-york-city/> [<https://perma.cc/Q5DZ-4DC2>] (last visited Oct. 15, 2023).

<sup>57</sup> *Id.*

<sup>58</sup> Lloyd, *supra* note 54.

<sup>59</sup> *Id.*

<sup>60</sup> Sharon Tang, *Post-Covid Housing Market*, HARV. MODEL CONG. (2022), <https://static1.squarespace.com/static/5cb7e5637d0c9145fa68863e/t/61d7656d60bc3654d4eec995/1641506157494/SPPresCab10.pdf> [<https://perma.cc/J9JY-CE4E>].

<sup>61</sup> Janaki Chadha, *New York Tried to Make Apartments Affordable. The Opposite Happened*, POLITICO (July 16, 2022), <https://www.politico.com/news/2022/07/16/new-york-housing-crunch-00045575> [<https://perma.cc/WJM3-5Q6C>].

with Manhattan's median apartment rental price reaching \$5,000 for the first time ever.<sup>62</sup> In addition to prices soaring, New York City is suffering from an acute housing shortage, as there is a desperate need for 560,000 new units by 2030.<sup>63</sup> While the city's necessity for new units within the next eight years is acute, inflation is pushing costs higher and higher, meaning that the soon-to-be new units will ultimately be difficult for the majority of New Yorkers to afford.<sup>64</sup>

### III. DISCUSSION

#### A. *Why Current Eviction Regulations Are Not Satisfactory*

Rent-stabilized apartments represent almost half of all rental housing in New York City and are among the most affordable places in the area to live, however, landlords only receive a minimal percentage of the rent they would otherwise be able to receive if they renovated the apartment, demolished the building to construct a high rise, etc. Tight restrictions on evicting rent-stabilized tenants infuriate landlords, and tenants living in rent-regulated units are often susceptible to mistreatment by landlords, since they are paying significantly below the market rate.<sup>65</sup> As a result, landlords are taking extraordinary measures to evict their rent-stabilized tenants, as current eviction regulations are confusing and unsatisfactory.

At the moment, landlords may evict their rent-stabilized tenants or refuse to renew the tenant's lease only if: (i) the tenant engages in wrongful conduct (other than nonpayment); (ii) the landlord intends to use the housing accommodation for the landlord's own primary residence or the landlord's immediate family members because of immediate and compelling necessity; (iii) the tenant is not occupying the housing accommodation as the tenant's primary residence; and (iv) the DHCR has issued an order permitting the landlord to commence the summary proceeding.<sup>66</sup> As a result of the limited subset of cases al-

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<sup>62</sup> *Id.*

<sup>63</sup> Shimon Shkury, *New York City Real Estate: Top Trends that Are Moving the Needle*, FORBES (Oct. 7, 2022), <https://www.forbes.com/sites/shimonshkury/2022/10/07/new-york-city-real-estate-top-trends-that-are-moving-the-needle/?sh=e4bed654aa63> [<https://perma.cc/T4Q3-NEHY>].

<sup>64</sup> Conor Dougherty, *The Rent Revolution is Coming*, N.Y. TIMES (Oct. 15, 2022), <https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html> [<https://perma.cc/WV98-NPD4>].

<sup>65</sup> Stephanie Gorin, *Collective Bargaining in Rent Stabilized Buildings: How New York City's Rent Regulated Market Can Benefit From the Fundamentals of Labor Law*, 17 *CARDOZO J. CONFLICT RESOL.* 1045, 1048 (2016).

<sup>66</sup> *Eviction Procedure for Rent-Stabilized Units (NY)*, THOMSON REUTERS, <https://l.next.westlaw.com/Document/Ie13c36e2bc4211e398db8b09b4f043e0/View/FullText.html?transitionTyp>

lowing landlords to evict rent-regulated tenants, illegal and immoral actions are often taken to remove these tenants from their units.

### i. Illegal Evictions

There is a clear imbalance of power between landlords and tenants of rent-stabilized units, which is often made worse by the time, money, and fear that comes with attending Housing Court.<sup>67</sup> Many tenants housed in rent-regulated apartments are intimidated by their landlords and fall subject to harassment, since the landlords either seek to replace the rent-regulated tenants with those who would pay full market value or hope to evict the tenants to knock down the old building and construct a high rise instead.<sup>68</sup> Consequently, the power balance inherent in the landlord-tenant relationship results in landlords taking extreme measures—such as cutting off a unit’s hot water supply or purposefully creating hazardous living conditions—to attempt to evict tenants, whether legal or not.

Rent-regulated tenants have certain eviction protections in place covered by the Tenant Protection Act of 2008, which “serve[s] as a life jacket for the most vulnerable New York City tenants,” providing adequate protection for tenants experiencing systematic harassment.<sup>69</sup> More specifically, this law creates a “new layer of protection for renters in New York City” by labeling certain actions as harassment under this legislation, including: (i) using force or making threats against a lawful occupant; (ii) repeated or prolonged interruptions of essential services; (iii) using frivolous court proceedings to disrupt a tenant’s life or force an eviction; (iv) removing the possessions of a lawful tenant; (v) removing doors or damaging locks to a unit; or (vi) any other acts designed to disturb a lawful occupant’s residence.<sup>70</sup>

However, while the preceding eviction guidelines may appear concise and *should* be engrained in landlords’ minds, landlords still often evict tenants illegally; however, they are almost never arrested for these illegal do-it-yourself (“DIY”) evictions.<sup>71</sup> Evicting tenants

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e=Default&contextData=(sc.Default)&firstPage=true&oWSessionId=cf214f0df4ac435db4d1a300e53b486a&isplc=1&fromAnonymous=true&bhcp=1 [https://perma.cc/ANG5-Q9CT] (last visited Sept. 17, 2023).

<sup>67</sup> *Mayor de Blasio Signs Three New Laws Protecting Tenants From Harassment*, N.Y.C., <https://www.nyc.gov/office-of-the-mayor/news/590-15/mayor-de-blasio-signs-three-new-laws-protecting-tenants-harassment> [https://perma.cc/7N26-782B] (last visited Nov. 14, 2023).

<sup>68</sup> *Id.*

<sup>69</sup> *Groundbreaking Tenant Protection Act Becomes Law*, N.Y. CITY COUNCIL (Mar. 13, 2008), <https://council.nyc.gov/press/2008/03/13/1323/> [https://perma.cc/F7JA-M5S5].

<sup>70</sup> *Id.*

<sup>71</sup> Ishan Thakore, *NYC Landlords Almost Never Get Arrested for Illegal DIY Evictions*, THE CITY (Feb. 17, 2022), <https://www.thecity.nyc/housing/2022/2/17/22937540/nyc-landlords-illegal-evictions-arrests> [https://perma.cc/MY9K-EJCR].

without first receiving a judge’s order in Housing Court is a common crime in New York.<sup>72</sup> It is quite common for landlords to try to find loopholes around the legal approval process of evicting rent-regulated tenants and altering the units. For instance, between 1993 and 2019, vacancy deregulation, “a loophole written into the system that allow[ed] landlords to escape regulations once rent reach[ed] a certain threshold,” ultimately “encourag[ing] real estate speculation by driving up rents in empty apartments.”<sup>73</sup> As a result of this loophole, the Housing Stability and Tenant Protection Act of 2019 (“HSPTA”) was enacted and ameliorated the issue of widespread unaffordability and evictions to a certain degree.<sup>74</sup> However, landlords still use deceptive tactics to try to evict landlords and de-regulate rent-stabilized apartments, such as cutting out the middleman—the DHCR—in eviction disputes and going directly through the Department of Buildings (“DOB”) instead.<sup>75</sup>

The DHCR and DOB both know that these illegal eviction attempts occur; however, they remain silent and have not addressed them.<sup>76</sup> Additionally, when landlords abide by the laws and submit plans to the DHCR, tenants have the ability to write responses.<sup>77</sup> In the illegal case of landlords going straight to the DOB, however, tenants are stripped of this right.<sup>78</sup> Just as this illegal loophole does not typically result in landlords getting into trouble, landlords who attempt to evict tenants via harassment, intentionally cutting utilities, changing the locks, etc. can similarly face legal consequences and go to jail for up to one year.<sup>79</sup> During the pandemic especially, which was a time of extraordinary hardship for both landlords and tenants, thousands of tenants filed Housing Court cases against their landlords for similar reasons.<sup>80</sup> However, the police rarely followed through with the complaints.<sup>81</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> Celia Weaver, *From Universal Rent Control to Cancel Rent: Tenant Organizing in New York State*, 30 *NEW LAB. F.* 93, 93–98 (2021).

<sup>74</sup> *Id.*

<sup>75</sup> Emily Eaton and Eva Henley, *Opinion: Close the Loophole Letting Landlords Displace Rent-Stabilized Tenants*, *CITY LIMITS* (Nov. 15, 2022), <https://citylimits.org/2022/11/15/opinion-close-the-loophole-letting-landlords-displace-rent-stabilized-tenants/> [<https://perma.cc/2A4F-VV9C>].

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*; Ishan Thakore, *NYC Landlords Almost Never Get Arrested for Illegal DIY Evictions*, *THE CITY* (Feb. 17, 2022), <https://www.thecity.nyc/housing/2022/2/17/22937540/nyc-landlords-illegal-evictions-arrests> [<https://perma.cc/MY9K-EJCR>].

<sup>80</sup> *THE CITY*, *supra* note 79.

<sup>81</sup> *Id.*

### 1. Repercussions of the Lack of Formal Rent-Stabilized Eviction Guidelines: Empty and Unavailable Housing Stock

While it is inauspicious that landlords are pushing their tenants out of rent-stabilized units via illegal measures and landlord-tenant disputes are at an all-time high, the root of the problem seems to stem from New York's unsatisfactory eviction laws. Now, a significant amount — around 61,000 units — of New York's prime affordable housing stock is empty and unavailable.<sup>82</sup> However, these apartments are not vacant for typical reasons such as not being able to find tenants or the rent being too high. Instead, landlords are “warehousing” these units; they are purposefully keeping apartments vacant during the current housing crisis, which those units could significantly alleviate.<sup>83</sup> There are no laws in place that prevent landlords from purposefully “warehousing” their properties, and landlords across the city are utilizing this cunning tactic for several reasons: (i) they may be waiting in hopes that rent-regulation laws eventually shift in their favor; (ii) since landlords can no longer increase a rent-stabilized unit's rent and take apartments out of rent-stabilization once a tenant moves out, they are making little to no profit off of these units; or (iii) landlords may be waiting on the result of lawsuits challenging the constitutionality of rent-regulation laws to reach federal court in hopes that rent-regulation is struck down completely.<sup>84</sup>

In addition to landlords warehousing units, the city also discovered that the number of apartments registered as rent-stabilized decreased more between 2019 and 2020 than it has in the past fifteen years, as these rent-stabilized units have “disappeared” from the market.<sup>85</sup> Tenant advocacy groups blame landlords for the decrease in rent-stabilized units, accusing them of holding these apartments “ransom” in order to move political policy in their favor.<sup>86</sup>

Thus, while “affordable rental units with strong tenant protections are exactly the type of housing most in need right now . . . withholding them has undoubtedly exacerbated the affordability crisis.”<sup>87</sup> As landlords suffer from rent laws which make it impossible to build

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<sup>82</sup> Hannah Frishberg, *NYC Landlords Holding 60K + Rent-Stabilized Units for 'Ransom': Memo*, N.Y. Post (Oct. 20, 2022), <https://nypost.com/2022/10/20/nyc-landlords-holding-60k-rent-stabilized-units-for-ransom/> [<https://perma.cc/9MU9-XCCT>].

<sup>83</sup> *Id.*

<sup>84</sup> Alanna Schubach, *Why Is My Landlord Warehousing Rent-Stabilized Apartments? Is He Looking to Combine Units?*, BRICK UNDERGROUND (Aug. 8, 2022), <https://www.brickunderground.com/rent/landlord-warehousing-rent-stabilized-apartments-combination-market-rate-nyc> [<https://perma.cc/6EHA-6Q4W>].

<sup>85</sup> *Id.*; Frishberg, *supra* note 82.

<sup>86</sup> Frishberg, *supra* note 82.

<sup>87</sup> *Id.*

a high rise or renovate vacant units without losing money, tenants are suffering right back, since the lack of these sought after units on the market is exacerbating the housing crisis, resulting in less housing and higher rents overall.<sup>88</sup>

## 2. Constant Protests

As a result of the city's housing crisis becoming increasingly dire, tenant advocates and lawmakers have been yearning for solutions. However, since landlords are pushing tenants out of their apartments through illegal measures and warehousing their units, landlord-tenant disputes are at an all-time level of severity, resulting in unpromising protests.<sup>89</sup> As of November 2022, tenants are conducting near-daily protests to demand landlords to cease rent-stabilized apartment vacancies.<sup>90</sup> In Crown Heights, Brooklyn, tenants who have been on rent strike for a full year at a building embedded with violations. The residents of 1392 Sterling Place claim that their landlord has kept twenty percent of the units vacant, some for a decade, and prevented any tenants from moving into the empty apartments.<sup>91</sup> Tenants refer to these vacancies as “zombie units,” hoping for warehousing to come to a halt.<sup>92</sup>

The Coalition to End Apartment Warehousing took to City Hall's steps in early November 2022 in hopes of ending landlord warehousing and opening vacant apartments.<sup>93</sup> Since landlords often claim that they make no money off of rent-stabilized units, one rally-goer asserted that “[y]ou can make money on rent-stabilized units, don't tell me otherwise.”<sup>94</sup> One study reporting on rent guidelines in New York City revealed that a typical apartment in a rent-stabilized building produced a net income of \$6,500 per year.<sup>95</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> Sam Rabiya & Rachel Holliday Smith, *In Near-Daily Protests, Tenants Demand a Stop to Rent-Stabilized Apartment Vacancies*, THE CITY (Nov. 3, 2022), <https://www.thecity.nyc/housing/2022/11/3/23439366/tenants-protest-rent-stabilized-apartment-vacancies> [https://perma.cc/Z3A9-JSBE].

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Sam Rabiya & Rachel Holliday Smith, *In Near-Daily Protests, Tenants Demand a Stop to Rent-Stabilized Apartment Vacancies*, THE CITY (Nov. 3, 2022), <https://www.thecity.nyc/housing/2022/11/3/23439366/tenants-protest-rent-stabilized-apartment-vacancies> [https://perma.cc/Z3A9-JSBE].

<sup>95</sup> *Id.*; see *2022 Income and Expense Study*, N.Y. CITY RENT GUIDELINES Bd. (Mar. 31, 2022), <https://rentguidelinesboard.cityofnewyork.us/wp-content/uploads/2022/03/2022-IE-Study.pdf> [https://perma.cc/3BAY-LP8K].

Advocates offer solutions to the issue at hand. For instance, public advocate Jumaane Williams stated that “the city needs legislation to register and document vacancies, contends landlords should be penalized for holding empty apartments, and says the city should explore options to acquire these units before more zombie units further terrorize our streets.”<sup>96</sup> Advocates also want DHCR to come out and make public the data revealing which apartments are vacant, as well as the rents per apartment unit.<sup>97</sup>

Lastly, as eviction case filings reached their highest levels since 2020, less than 10% of tenants facing an eviction received the free legal representation to which they are entitled.<sup>98</sup> Without proper appointed representation, tenants will be kicked out of their rent-stabilized units and forced to either live somewhere more expensive or revert to homelessness.<sup>99</sup> Thus, a solution is needed to ensure that landlords and tenants alike can reach eviction agreements via more cordial, inviting means that benefit each of the parties involved.

### 3. Why New York City Needs Formal Guidelines Regarding the Eviction of Rent-Stabilized Tenants

Current eviction regulations for rent-stabilized units are confusing, inconsistent, and unobliging, often resulting in downsides for landlords and tenants alike. As previously discussed, tenants in rent-regulated units are susceptible to mistreatment by their landlords since they are paying below market rate, while landlords are subject to receive a significantly lower income than market rate would allow and are unable to evict tenants to improve the building or build a high rise. Without formal guidelines detailing the proper and recommended procedure for landlords to evict their rent-stabilized tenants, landlords and tenants are wasting their time, energy, and resources hiring lawyers, going to court, and constantly negotiating deals in an informal setting among other things.

### 4. The Benefits of New Construction to New York City Residents

Although New York City is the largest city in America, its housing shortage deeply affects this city’s citizens. Recently, the supply of housing in New York City has not been able to keep pace with

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<sup>96</sup> Rabiya & Smith, *supra* note 89.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*



growing demand.<sup>100</sup> As a result of New York City’s housing crisis, rents are higher, apartments are more valuable, and it is harder for middle and low-income people to reside in the city.<sup>101</sup> In efforts to remedy the housing crisis, large-scale developments are now being considered.<sup>102</sup> While there is no perfect solution to the daunting housing crisis at hand, city council members intend to contribute to the creation of more housing within the five boroughs.<sup>103</sup> For instance, Councilmember Tiffany Cabán announced that the city will build the Halletts North project:—a development along waterfront property in Astoria, Queens with 1,340 affordable apartment units.<sup>104</sup> Likewise, another recently approved development was the Bruckner Boulevard rezoning in the Throggs Neck section of the Bronx, with 349 units.<sup>105</sup> There is one more massive proposal in the works that the Council has yet to vote on, which would create 2,845 units in Astoria.<sup>106</sup>

In addition to the creation of more affordable housing kick-started by city councilmembers, new developments from private landlords are also needed to alleviate the lack of housing and soaring rents from New York City’s housing crisis. According to New York City Mayor Eric Adams, “[the city] also need[s] to speed up the process to allow people who want to make private investments today to create housing.”<sup>107</sup> Landlords, however, are in the business of creating new developments with the goal of making a significant profit. Often, landlords and property owners alike aim to profit on the fact that there are citizens willing to pay more in gentrifying neighborhoods.<sup>108</sup> As a result, New York City councilmembers also hope to pass the Good Cause bill, stating that one must have a

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<sup>100</sup> Sean Campion, *Strategies to Boost Housing Production in the New York City Metropolitan Area*, CITIZENS BUDGET COMM’N (Aug. 26, 2020), <https://cbcny.org/research/strategies-boost-housing-production-new-york-city-metropolitan-area> [<https://perma.cc/H3KB-T47P>].

<sup>101</sup> James Barron, *Why the Rent is So High*, N.Y. TIMES (Aug. 8, 2022), <https://www.nytimes.com/2022/08/08/nyregion/why-the-rent-is-so-high.html> [<https://perma.cc/4D6M-HBX9>].

<sup>102</sup> Emily Ngo, *To Solve NYC’s Housing Crisis, Large-Scale Developments Are Being Considered*, SPECTRUM NEWS (Oct. 14, 2022, 5:15 PM), <https://www.nyl.com/nyc/all-boroughs/housing/2022/10/14/to-solve-nyc-s-housing-crisis--large-scale-developments-are-being-considered> [<https://perma.cc/FL9F-RSPY>].

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Emily Ngo, *To Solve NYC’s Housing Crisis, Large-Scale Developments Are Being Considered*, SPECTRUM NEWS (Oct. 14, 2022, 5:15 PM), <https://www.nyl.com/nyc/all-boroughs/housing/2022/10/14/to-solve-nyc-s-housing-crisis--large-scale-developments-are-being-considered> [<https://perma.cc/FL9F-RSPY>].

<sup>108</sup> *Id.*

specific reason to evict somebody.<sup>109</sup> This bill would be beneficial in that it would not allow landlords to evict tenants in order to replace them with a more high-paying tenant; however, landlords of rent-stabilized units will still find loopholes and ways to try to evict their tenants, resulting in unwanted disputes and potential litigation.<sup>110</sup>

### 5. Local Land Use Regimes and Issues in High-Rise Development

Although developers seek to build high-rises to generate more revenue and increase housing stock and their portfolios, local land use regimes often limit these aspirations.<sup>111</sup> Limitations include air rights and floor area ratios. Air rights, or “excess development rights,” are “floor area that is allowed by zoning but has not been constructed or used.”<sup>112</sup> For example, in a zoning district that allows a Floor Area Ratio of 5.0, a 10,000 square foot property may be developed with up to 50,000 square feet of floor area.<sup>113</sup> If the property contains a building that has only 40,000 square feet of floor area, the property has 10,000 square feet of air rights.<sup>114</sup> Floor Area Ratio, on the other hand, is a “mathematical formula that determines how many square feet can be developed on a property in proportion to the lot area.”<sup>115</sup> The property area is “multiplied by the FAR factor with the result being the maximum floor area allowed for a building on the lot.”<sup>116</sup> Limitations vary depending on several factors, including the size and shape of the property, its location, and the zoning district in which it is located.<sup>117</sup> Thus, these limitations can get in the way of landlords’ hopes of demolishing rent-stabilized apartment buildings in order to construct a more updated building or a high-rise.

Besides restrictions from land use regimes, redevelopment in New York City typically tends towards luxury.<sup>118</sup> When a landlord builds a tall building, there is hardly a difference in

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<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *New York City Air Rights*, ROSENBERG & ESTIS, P.C., <https://www.rosenbergestis.com/in-the-news/new-york-city-air-rights/> [<https://perma.cc/MEK5-6QKX>] (last visited Nov. 19, 2022).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> Jorge Fontan, *Floor Area Ratio FAR Zoning Calculations*, FONTAN ARCHITECTURE (Apr. 12, 2022), <https://fontanarchitecture.com/floor-area-ratio-zoning-far/> [<https://perma.cc/5JNZ-RX56>].

<sup>116</sup> *Id.*

<sup>117</sup> ROSENBERG & ESTIS, P.C., *supra* note 111.

<sup>118</sup> Kim Velsey, *When a New High-Rise Means Less Housing*, CURBED (July 21, 2022), <https://www.curbed.com/2022/07/bigger-building-fewer-apartments-nyc.html> [<https://perma.cc/D8ZN-J9VG>].

construction cost between a luxury apartment and a simpler one.<sup>119</sup> Landlords, however, are incentivized by the difference in selling price.<sup>120</sup> Likewise, landlords often do not care whether or not they build more apartment units; instead, they seek to build less luxurious units for a higher cost. For instance, a five-story tenement on 75th Street and Third Avenue was recently demolished and replaced with an eighteen-story apartment building.<sup>121</sup> In the spring of 2021, the site sold to luxury condo developer EJS, intending to build thirty-eight apartments with no retail space.<sup>122</sup> The low-rise tenement that the high-rise is replacing initially had a total of forty-three units, in addition to retail space.<sup>123</sup> Thus, the building was bought by a luxury developer and instead of adding more units and housing to the New York City housing market, a bigger building with fewer units was constructed which is relatively common as of recently.<sup>124</sup>

While limitations to new construction in New York City exist and landlords often construct new buildings which benefit the wealthy rather than the common New Yorker, knocking down small tenements with rent-stabilized units and building a high-rise would still create more housing.<sup>125</sup> As a result, with the creation of more and more housing, rents in general will go down, and the New York housing stock will slowly become more affordable.<sup>126</sup>

#### IV. PROPOSAL

##### A. *Why Landlords and Tenants Especially Warrant Mediation*

Mediation has not typically been used to help resolve landlord-tenant disputes regarding issues of rent-regulation.<sup>127</sup> However, the problem of abusive tenant displacement in New York City is now particularly inauspicious.<sup>128</sup> The feelings of frustration and marginalization amongst longtime residents who are displaced by evictions grow as landlords often turn to aggressive and abusive tactics to

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> Kim Velsey, *When a New High-Rise Means Less Housing*, CURBED (July 21, 2022), <https://www.curbed.com/2022/07/bigger-building-fewer-apartments-nyc.html> [<https://perma.cc/D8ZN-J9VG>].

<sup>124</sup> *Id.*

<sup>125</sup> ROSENBERG & ESTIS, P.C., *supra* note 111.

<sup>126</sup> Barron, *supra* note 101.

<sup>127</sup> Rotondaro & Ewing, *supra* note 50.

<sup>128</sup> Willis, *supra* note 42.

compel these residents to leave.<sup>129</sup> As discussed previously, without formal eviction guidelines for rent-stabilized tenants, eviction attempts by landlords often result in aggressive buyout tactics, mistreatment and harassment of tenants, engaging in illegal construction on the building, and failing to provide the tenants with utilities, repairs, and other necessary services.<sup>130</sup> Laws such as the Tenant Protection Act of 2008<sup>131</sup> and the Housing Stability and Tenant Protection Act of 2019 provide a bit of relief from harassment and these cunning landlord practices; however, these laws fail to address coercive buyout tactics.<sup>132</sup> The Tenant Protection Act does provide certain safeguards for tenants, such as the illegality of the interruption of essential services, yet aggressive buyout tactics on behalf of landlords is neither mentioned nor covered by this law.<sup>133</sup> Landlords' buyout offers, "which are often coupled with other means of 'intimidat[ing] or pressur[ing]' longtime residents to leave, epitomize the 'injustice of community upheaval and working-class displacement [and] also . . . the erosion of affordable housing' in rapidly gentrifying communities."<sup>134</sup>

Landlords and tenants would both benefit from the implementation of mediation as a means to address and resolve disputes over rent-regulated units. Data shows that resolving a single dispute outside of court, rather than going to trial, "is the most rational business choice from an economic viewpoint."<sup>135</sup> Eviction court is unpredictable, costs a significant amount of money and time, and is typically inefficient.<sup>136</sup> Likewise, the average cost of an eviction is \$3,500 to \$10,000 without even factoring in consultations with an attorney, going to court, among other expenses.<sup>137</sup> Mediation, on the other hand, is significantly more affordable—and oftentimes free—and has a higher success rate, deeming it a solution for these types of disputes.<sup>138</sup>

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<sup>129</sup> *Id.*

<sup>130</sup> *Notorious Landlord, Raphael Toledano, To Pay \$3 Million, Other Penalties for Harassing NY Tenants*, OFF. N.Y. ST. ATT'Y GEN. (June 20, 2019), <https://ag.ny.gov/press-release/2019/notorious-landlord-raphael-toledano-pay-3-million-other-penalties-harassing-ny> [<https://perma.cc/MSD2-ENTK>].

<sup>131</sup> N.Y.C. Loc. L. No. 7 (2008).

<sup>132</sup> Fisher, *supra* note 49, at 494.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* See also Tom Slater, *The Eviction of Critical Perspectives from Gentrification Research*, 30 INT'L J. URB. & REG'L RSCH. 737, 737 (2006).

<sup>135</sup> *Landlord Tenant Mediation: A Modern Approach to Tenant Issues*, AVAIL (Feb. 7, 2022), <https://www.avail.co/education/articles/landlord-tenant-mediation-a-modern-approach-to-tenant-issues> [<https://perma.cc/3BCC-869F>].

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

B. *Benefits of Mediation Generally and in Housing Disputes*

Mediation is an affordable, convenient, voluntary, and confidential service that helps parties in dispute reach their own settlement.<sup>139</sup> Instead of spending time and money going through litigation and standing in front of a judge to make a decision, the parties meet with a trained mediator who helps the party make their own decision on how to settle the dispute.<sup>140</sup> If a settlement is reached, it is put into writing, signed by each party, and becomes a legally binding contract that is enforceable in court.<sup>141</sup> In order for parties to engage in mediation, there are no filing fees, both day and evening sessions are available, settlements can often be reached in one to two hours, you lose no rights by trying to resolve your dispute through mediation, and all conversations during sessions are confidential.<sup>142</sup> Mediation allows each party to speak their truth and be heard, which both informs the trained mediator on the situation at hand and allows the people in dispute to better understand each other.<sup>143</sup> Lastly, mediation works. Parties who reach their own settlement through mediation sessions are more likely to comply with the settlement reached.<sup>144</sup>

C. *Benefits of Mediation Specifically in Rent-Stabilized Landlord-Tenant Eviction Disputes*

Mediation is a better alternative to going to DHCR, hiring attorneys to negotiate buyouts, or forcing landlords to relocate tenants and pay the difference in the tenant's old and new rent. First, mediation is inherently a more just and effective dispute resolution approach than court evictions. Court systems are overburdened, inefficient, and public trust and confidence is often undermined. Landlords and tenants alike may not feel as though the court system protects their rights and interests. Mediation, in contrast, helps landlords and tenants talk through their differences in a more calm and

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<sup>139</sup> *Resolving Your Case Through Mediation in Civil Court of the City of New York*, N.Y. Cr. Sys. (Jan. 6, 2014), <https://www.nycourts.gov/courts/nyc/civil/pdfs/mediation.pdf> [https://perma.cc/9RWS-N4P9].

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Resolving Your Case Through Mediation in Civil Court of the City of New York*, N.Y. Cr. Sys. (Jan. 6, 2014), <https://www.nycourts.gov/courts/nyc/civil/pdfs/mediation.pdf> [https://perma.cc/9RWS-N4P9].

increasingly inviting environment without incurring the time and expenses of a proper courthouse.

While mediation has been used in the past to attempt to prevent landlords from evicting tenants, mediation can also be used to make both parties benefit equally from the deal at hand.<sup>145</sup> Landlords who aspire to knock down their buildings in order to build a high-rise or renovate the entire building can kindly talk tenants out of leaving their rent-stabilized units while offering them an alternative to their original set-up, such as a lump sum, the difference in their new and old rent, or helping find them a new, reasonable apartment in a controlled and moderated setting rather than having landlords simply “buying them out” and leaving them to struggle on their own. Rather than being nasty and forceful and taking drastic measures to force tenants to leave, such as failing to provide tenants with utilities, engaging in mediation would result in a more just and fair settlement. Landlords and tenants can work through their differences in a calmer and more collected environment under the guidance of a trained mediator.

In 2016, the Baltimore City District Court piloted a Rent Court Mediation program for five months, and its results give hope for a mediation program in New York City between landlords and tenants of rent-regulated units.<sup>146</sup> The District Court of Maryland’s Alternative Dispute Resolution Office (“ADR Office”) developed a program to introduce volunteer mediators to Pilot procedures.<sup>147</sup> The pilot ran during the course of a twenty-three week program, and over the course of this pilot, on average, one mediation occurred for each volunteer day. The average length per mediation session was 1.07 hours.<sup>148</sup> The program received seventy-three requests for ADR services and forty-three referrals to the ADR practitioner.<sup>149</sup> Of the forty-three referrals to ADR, thirty-seven resulted in mediation.<sup>150</sup> Thus, ADR practitioners conducted thirty-seven mediations, and the mediations proved utterly successful, as thirty agreements resulted.<sup>151</sup> Put simply, eighty-one percent of the cases that were sent to mediation reached an agreement.<sup>152</sup>

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<sup>145</sup> *Id.*

<sup>146</sup> *Report on the 2016 Rent Court ADR Pilot for the District Court of Maryland in Baltimore City*, CTR. DISP. RESOL. UNIV. MD. FRANCIS KING CAREY SCH. L. (May 2017), <https://mdcourts.gov/sites/default/files/import/district/adr/pdfs/rentcourtreport.pdf> [<https://perma.cc/6T4M-NFPB>].

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Report on the 2016 Rent Court ADR Pilot for the District Court of Maryland in Baltimore City*, CTR. DISP. RESOL. UNIV. MD. FRANCIS KING CAREY SCH. L. (May 2017), <https://mdcourts.gov/sites/default/files/import/district/adr/pdfs/rentcourtreport.pdf> [<https://perma.cc/6T4M-NFPB>].

<sup>152</sup> *Id.*

As a result of the Baltimore Rent Court Mediation's Pilot, ADR—mediation, in particular—clearly and successfully provided a positive experience for practitioners and participants alike.<sup>153</sup> Data from participant surveys consistently point to participant satisfaction with the ADR process, particularly the ability to talk and be heard.<sup>154</sup> The Baltimore City Rent Court's ADR program provides a framework with potential for other jurisdictions and can be a model for implementation in New York City, a place where landlord-tenant disputes are extremely common.<sup>155</sup>

D. *Potential Obstacles for an Eviction-Based Mediation Program*

Some may argue that since this program results in tenants being evicted, this is a negative outcome since evictions contribute significantly to the growing epidemic of homelessness, housing insecurity, and financial insecurity in this country. Likewise, others may argue that landlords benefit disproportionately to the tenants in these situations. However, the proposed system below is designed to be mutually beneficial for both landlords and tenants.

E. *The Need for Mediation Between Rent-Stabilized Tenants and Their Landlords*

Rent-stabilization laws in New York City prevent new buildings from being built as landlords are unable to evict tenants from rent-regulated units in order to demolish an older building and construct a high rise building instead, affecting both landlords and tenants alike. While landlords are unable to increase their income from owning a five-unit building rather than a multi-hundred-unit high-rise in its place, tenants are also stuck living in unrenovated, old apartments and often time living in those conditions solely due to the unit's low cost. Similarly, landlords' inability to construct bigger buildings that house significantly more people is contributing to the housing crisis. This issue prevents new buildings from being built, which, arguably, would reduce the price of apartment units in New York City. As these issues are worse than ever in 2023, landlords and tenants would greatly benefit from a mediation program implemented for both sides of the disputes to benefit.

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*



#### F. *Details of the Proposed Mediation System*

New York City should establish a formal guideline where landlords can remove tenants in rent-stabilized units, place them in temporary housing—such as another one of the landlord’s properties—or pay the difference in their rent until the landlord’s desired demolition and high-rise construction is complete. Then, landlords will move the tenants back into the improved building once construction is complete. When initially moving a tenant into another property, the tenant must be given proper notice and consent before making the move. The new unit must be in a condition that is safe and fit for habitation, and the apartment layout, square footage, and details regarding the temporary unit and building itself will be discussed via mediation. Once the landlords move their tenants back into the new and updated units after demolition and construction is concluded, they will be required to give these tenants a similar price to the one they were initially paying in their rent-regulated unit, as well as a similarly sized apartment. This way, landlords will be making an increasingly larger income than they were from their small building with rent-stabilized units, and tenants will live in new and improved buildings that may have units with new appliances and state-of-the-art building amenities with little to no difference in price.

In order for this proposal to be put to life, it is important that landlords communicate closely and kindly with the tenants to inform them of proposed construction plans and to discuss any potential relocation options. As a means of achieving this goal that benefits both the landlords and the tenants, both parties must engage in mediation with open minds to clarify, talk through, and decide upon the terms of their specific agreement. Rather than one side benefitting from the results of devious tactics or a buyout, rent-regulated landlord-tenant eviction mediation would result in resolutions crafted and agreed to by both sides.<sup>156</sup> Mediation will incentivize the parties to work together to reach a mutually beneficial solution that trumps the hardships of court.

The creation of formal eviction guidelines mandated through mediation can provide clear and consistent rules for both landlords and tenants to follow, reducing the likelihood of misunderstandings and conflicts. Such guidelines may entail the following:

1. As soon as a landlord decides that he or she intends to:
  - (i) make significant improvements to rent-stabilized units;

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<sup>156</sup> AVAIL, *supra* note 135.

or (ii) demolish a building with rent-stabilized units in order to construct a high rise, he or she must notify the tenant as soon as possible, providing notice of the upcoming change.

2. When providing notice to the tenant—and rather than sending an eviction notice to the tenant, simply contacting the tenant to engage in a buyout offer, or creating hazardous conditions in the apartment to drive the tenant out themselves—the landlord must ask the tenant if they are willing to engage in mediation and attach a notice explaining what mediation is, its benefits, etc.
3. If both parties agree to a mediation session, the mediation will be led by a trained landlord-tenant mediator who undergoes a background check to ensure he or she is not biased or acquainted with the landlord or tenant and can help shape the discussion by providing the following alternatives for tenants:
  - i. Being relocated to a different building by the landlord until the renovation or demolition is complete. Once the renovation/demolition is complete, tenant will be moved back into a similarly sized apartment unit. The landlord will subsidize the move, pay all moving expenses, and pay the difference in rent between the tenant's current rent-stabilized apartment and their temporary new unit. The Landlord can either move the tenant into another one of their buildings or a building of the tenant's choosing as long as the price point is within a reasonable amount. This way, landlords will have the ability to make their desired improvements to their property while tenants will be living in new, updated units at the same or a similar price point to what they were already paying.
  - ii. Talking through and negotiating a deal where the landlord pays the tenant a sum of money to move out of the rent-stabilized unit for good.
  - iii. The landlord permanently moving the tenant to another building and paying the difference in the tenant's new rent for a specified number of years, depending on the circumstances.

The eviction guidelines stated above and established via mediation can provide an efficient and orderly process for resolving disputes and evicting tenants when necessary. In addition to providing an effective means of resolving disputes, the use of mediation and

formal eviction guidelines can also help to promote a sense of fairness and justice in the housing market. Rent-stabilized tenants, who are often low-income, vulnerable, and in need of affordable housing, may feel that the legal system is stacked against them.<sup>157</sup> By providing an alternative means of resolving disputes that is more equitable and less adversarial, the proposed mediation system with formal eviction guidelines can help to promote a sense of fairness and justice in the housing market, leaving all parties at an advantage in the end.

While mediation can greatly benefit landlords and tenants in eviction disputes, it is important that landlords work closely with tenants to find suitable relocation options that meet their needs. This can include providing financial assistance for moving expenses and ensuring that the new rental units are of comparable size, quality, and in a similar location to the original rental units. It is also important for the landlord to be transparent in all the steps of the process, clear in his or her communication, and in all the details of the eviction and relocation process. Furthermore, the landlord should comply with laws and not break any laws currently in place, avoiding any legal issues that may arise.

Mediators for rent-regulated landlord-tenant eviction cases should be selected based off their qualifications, training, and experience in the field. While mediators typically do not have specific knowledge on the types of cases that they are mediating, the mediators in my proposed system should be well-versed in local laws and regulations that govern landlord-tenant eviction cases. The mediators must be unbiased, meaning they must undergo a background check to ensure they have not worked with the parties whom they will mediate for and have no prior ties to them. Landlords and tenants will work together to choose the mediator to ensure that they are both happy with whom they are working with, that they can trust the mediator, and that there will be no bias present. The cost of the mediator must be paid by the landlord, as the landlords in these scenarios are ultimately the parties bringing the cases and trying to evict the tenants. In addition, while mediators may already work at a reputable organization or agency specializing in landlord-tenant mediation, mediators may also be volunteers who are well-versed in the dispute area, as the volunteer mediators in the Baltimore Rent Court Mediation's Pilot proved to be extremely successful in their work.<sup>158</sup>

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<sup>157</sup> *Rent Control in NYC: Everything You Need to Know*, BUNGALOW (Feb. 1, 2022), <https://bungalow.com/articles/rent-control-in-nyc-everything-you-need-to-know> [<https://perma.cc/95UV-M28A>].

<sup>158</sup> CTR. FOR DISP. RESOL. UNIV. OF MD. FRANCIS KING CAREY SCH. L., *supra* note 151.

## IV. CONCLUSION

Creating a mediation system and formal eviction guidelines for landlords and their rent-stabilized tenants can provide a win-win situation for both parties by providing a fair and efficient means of resolving disputes, promoting a sense of fairness and justice in the housing market, and protecting the rights of both parties. While evicting rent-stabilized tenants in order to build a high-rise can be a complex process, effective communication, following proper legal procedures, and mediation can help make the process as auspicious as possible.

More specifically, by utilizing the proposed mediation system to allow landlords to construct high rises or improve their buildings by removing rent-stabilized tenants and either placing them in different buildings of their choice or relocating tenants until construction is complete, New York City will: (i) develop an increased housing supply; (ii) likely see a decrease in rents across the city as housing becomes more widely available; and (iii) both parties involved in the mediation will likely end up with a beneficial, agreeable, advantageous solution. The implementation of these mechanisms should be a top priority for policymakers, landlords, and tenants alike.