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IN THIS ISSUE

FEATURE

How to Get DHCR Approval to Demolish a Rent-Regulated Building 1

DEPARTMENTS

IN THE NEWS

- NYC Public Advocate Reveals 2020 List of City's Worst Landlords 5
- City Council Passes Bill to Facilitate Opening of New Buildings 6
- Cuomo Announces Executive Order to Help Needy Renters 6

MANAGEMENT BASICS

- Post Hurricane Evacuation Notices If Building Is in Evacuation Zone 7
- FDNY-Issued Hurricane Weather Emergency Preparedness Information 8

BUILDING MANAGEMENT CALENDAR 9

ANNUAL INDEX 10

Practical Tools for Efficient, Cost-Effective Apartment Building Management

How to Get DHCR Approval to Demolish a Rent-Regulated Building

Demolition is one of the few routes left to deregulation.

The DHCR recently updated its fact sheet related to demolitions. Demolitions have garnered more attention in recent years due to the sweeping changes made to rent regulations as a result of the Housing Stability and Tenant Protection Act (HSTPA). Passed in June 2019, HSTPA severely limited rent increases and the ability for owners to deregulate apartments after their rents had passed a certain threshold. A demolition remains as one of the few grounds

upon which an owner may end a rent-regulated tenancy.

A standard demolition involves taking down the entire building and constructing a new development from the ground up. But in other instances, an owner may intend to just gut the building and reconfigure the apartments. In one case, the state's highest court held that it wasn't important that there's no precise or expansive definition of "demolition" in the Rent Stabilization Law and Code [Pekham v. Calogero, May 2009; LVT #21232].



Over the years, the DHCR hasn't required an owner who has submitted a demolition application to show that it intends to "raze the structure to the ground" to be successful. An intent to gut the interior of the building, while leaving the walls intact, has been held as sufficient.

To be able to deny a lease renewal to a rent-stabilized tenant on the basis of demolition, an owner must submit an application to the DHCR showing:

- The new and approved building plans for the building;
- The financing to complete the demolition and construction; and
- An agreement to pay tenants' relocation expenses and stipends.

We'll discuss these requirements, the application process, and timing requirements for notices and tenant responses.

BASIC REQUIREMENTS

To be able to evict or deny a lease renewal on the grounds of demolition, you must comply with the following requirements.

Permission from DHCR

A demolition eviction requires an owner to first get permission from the DHCR to do so. This is a process that can take months or years. You must file Form RA-54, "Owner's Application for Order Granting Approval to Refuse Renewal of Lease and/or to Proceed for Eviction" with the DHCR.

The DHCR recently issued Advisory Opinion 2020-9 for owners of buildings with rent-controlled tenants. In New York City, if your building contains rent-controlled tenants, then before filing Form RA-54, you must also file with the DHCR and serve the rent-controlled tenants with Form RC-50, "Report and Certification To Alter or Demolish Rent Controlled

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THE APPROVAL PROCESS CAN TAKE MONTHS OR YEARS.

Occupied Housing Accommodations.” The RC-50 form isn’t required where there are no rent-controlled tenants in the building. However, when it is required, the RC-50 form must be filed before submitting plans to the NYC Department of Buildings (DOB).

Proof of Adequate Financing

You must show the DHCR that you have the financial ability to complete the intended project. Evidence of financial ability may include a Letter of Intent or a Commitment Letter from a financial institution, or other evidence that the DHCR may deem appropriate under the circumstances. This evidence is included in the RA-54 application package.

Approved Building Plans

The plans for the project must have been already approved by the appropriate city agency such as the DOB, Landmarks, Department of Environmental Protection—whatever is required. As part of DOB’s PW1: Plan/Work Application, it’s important to note that Section 26 includes questions about whether apartment units will remain occupied during construction, whether the units are subject to rent control and rent stabilization, and whether the DHCR has been notified about the proposed work. The DOB plans show the scope of the work and how a project will meet the demolition standard.

In one case, an owner applied to the DHCR for permission to refuse to renew tenants’ rent-stabilized leases and/or proceed with evictions for the purpose of fully demolishing its building. The district rent administrator ruled against the owner because the plans it filed with DOB showed that the building would remain occupied. This was contrary to the DHCR’s definition of “demolition,” which required, at minimum, the complete gutting of all interior spaces of a building. The owner claimed that its architectural plans met the definition of demolition. But the owner filed a gut renovation application with the DOB, which called for, in part, a gut reno

of the existing building with no change to use or occupancy. As a result, the DHCR concluded on appeal that the rent administrator reasonably found that this application didn’t meet the standard for demolition [2 Adelphi Street LLC: DHCR Adm. Rev. Docket No. FU210028RO, February 2018; LVT #28339].

Tenant Payments

An owner must pay the tenant’s reasonable moving expenses. In addition, if the tenant leaves by the vacate date in the DHCR’s order, the tenant is entitled to a stipend. If the tenant doesn’t vacate the apartment on or before the date in the DHCR order, the stipend is reduced by one-sixth of the total stipend for each month the tenant remains in occupancy after the vacate date in the final order. There are three stipend options available to the owner. At the owner’s option, the owner may:

- Relocate the tenant to a suitable housing accommodation at the same or lower legal regulated rent in a closely proximate area, or in a new residential building if constructed on the site, in which case suitable interim housing must be provided at no additional cost to the tenant; plus, in addition to reasonable moving expenses, a payment of a \$5,000 stipend; or
- Where an owner relocates the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant’s reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to the difference in rent, at the commencement of the tenant’s occupancy of the new housing accommodation, between the subject housing accommodation and the new housing accommodation, multiplied by 72 months; or
- Pay the tenant a stipend that’s the difference between the tenant’s current rent and an amount calculated using the demolition stipend chart

YOU MUST PAY THE TENANT'S REASONABLE MOVING EXPENSES AND A STIPEND.

from Operation Bulletin 2009-1. This difference is multiplied by 72 months. The stipend chart assumes the owner pays the tenant for a minimum of three rooms and the final amount is adjusted by the Rent Guidelines Board increases issued since the Operational Bulletin. This is the only option in which the owner isn't obligated to find suitable housing accommodations.

Tenants who would lose income-dependent government benefits because of the stipend may elect to waive the stipend and have the owner relocate them to a suitable housing accommodation at the same or lower legal regulated rent in a nearby area.

For the relocation options, "suitable housing accommodations" means housing that's similar in size and features to the respective housing now occupied by the tenants. The new accommodations must be freshly painted before the tenants move in and must include the same required services and equipment the tenants received in their prior accommodations. The new accommodations don't have to be rent stabilized provided the owner submits a contractual agreement that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant requests a shorter lease period in writing.

If you offer the tenant a comparable housing accommodation, the tenant may file an objection with the DHCR challenging its suitability within 10 days after you've made it available for the tenant to inspect. Within 30 days thereafter, the DHCR will inspect the accommodation, on notice to both parties, in order to determine whether it's suitable.

If the DHCR determines that the housing accommodation isn't suitable, you must offer the tenant another accommodation. The tenant will have 10 days to inspect it to consider its suitability.

If the DHCR determines that the accommodation is suitable, the tenant then has 15 days to accept it. A tenant who

refuses to accept relocation to any housing accommodation the DHCR determines is suitable will lose the right to relocation by the owner and to receive payment of moving expenses or any stipend.

APPLICATION PROCESSING

Once you've filed an application, you may refuse to renew tenants' leases until a determination of the application has been made. Tenants may remain in occupancy during this period, and you may not raise the rents. If the application is denied or withdrawn, you must again offer prospective renewal leases to the tenants, as directed in the DHCR's order of denial or withdrawal.

In addition, you're required to serve tenants with termination notices, which among other things state "that the tenant shall not be required to vacate until DHCR has issued a final Order approving the RA-54 application." In New York City, pursuant to Rent Stabilization Code Section 2524.2(c) (3), after filing a demolition application, an owner must serve each tenant with a Termination Notice at least 90 and not more than 150 days prior to the expiration of the tenant's lease term. Provided that each tenant whose "window period" occurs before the order is issued is served with a timely termination notice, the order granting the application may be issued.

In one case, however, an owner didn't send the tenant a required termination notice within the window period specified in the Rent Stabilization Code but was able to show that his action wasn't willful due to special circumstances related to the purchase of his building. Initially, the district rent administrator said the owner could re-apply in the future during the window period applicable to an existing lease. On appeal, the court said DHCR Operational Bulletin 2009-1 states that if an owner doesn't send a tenant the required termination notice during the window period but can show that such failure wasn't the result of "a willful attempt to evade this obligation" and that the owner has otherwise substantially complied with its obligation

**IF YOU GET A
DHCR VACATE
ORDER AND
THE TENANT
DOESN'T GO, YOU
HAVE TO TAKE
THE TENANT TO
HOUSING COURT.**

to send the notice, the DHCR won't have to terminate a demolition application.

In this case, the owner showed that its actions weren't willful. There was only one remaining tenant in the building, and the owner bought the building after the tenant's last lease had already expired. The tenant had been without a lease since 2014, had received the owner's application, and hadn't objected to the application. To hold an owner to a stricter requirement under the circumstances involved would create an undue hardship since the rest of the building was vacant and unrentable. The owner's application otherwise met the requirements for demolition approval. The owner demonstrated that the project included a gutting of all the interior building space and submitted an architect's statement attesting to the plan along with filed DOB plans and a Tenant Protection Plan (TPP). The owner also showed proof of current financial ability to complete the project [1714 Madison LLC: DHCR Adm.

Rev. Docket No. IS210005RP, August 2020; LVT #30963].

If your RA-54 application is granted, the DHCR order will contain terms relating to relocation stipends and moving expenses, and will give the tenant a reasonable amount of time to vacate the apartment. It's important to note that the DHCR can't order the eviction of any tenant. In other words, if you get a vacate order from the DHCR and the tenant doesn't go, then you need to take the tenant to Housing Court. Warrants of eviction must be obtained from the court.

On the other hand, if your application is denied or withdrawn, the DHCR order will direct you to offer the tenants prospective lease renewals. In either case, whether the order is granted or denied, any party aggrieved by the DHCR's determination may file a Petition for Administrative Review (PAR) within 35 days. The filing of the PAR or appeal freezes the order. ◆

IN THE NEWS

NYC Public Advocate Reveals 2020 List of City's Worst Landlords

Public Advocate Jumaane Williams recently released the annual Worst Landlord Watchlist, which catalogues the 100 most egregiously negligent landlords in New York City as determined by widespread, repeated, and unaddressed violations in buildings on the list. The New York City Housing Authority (NYCHA) tops the list for the third year in a row, while Williams also added Mayor Bill de Blasio himself, citing what he called mismanagement of NYCHA and a failure to take sufficient action against individual landlords in 2020 and throughout his term.

According to the Public Advocate's office, with de Blasio set to begin his final

year in office, the number of NYCHA work orders has skyrocketed, the safety of NYCHA buildings has deteriorated, and lead exposure for children living in NYCHA units across the city is at previously unknown and devastating levels.

The Public Advocate's Worst Landlord Watchlist is an information-sharing tool intended to allow tenants, public officials, advocates, and other concerned individuals to identify which residential property owners consistently flout the city's laws intended to protect the rights and safety of tenants. The list was first introduced in 2010 by then Public Advocate Bill de Blasio.

City Council Passes Bill to Facilitate Opening of New Buildings

On Dec. 10, 2020, the New York City Council passed Intro. 2033, creating Interim Certificates of Occupancy (ICOs). Certificates of Occupancy are government documents that indicate the legal use and occupancy of buildings.

The bill allows for a new type of temporary Certificate of Occupancy (TCO) for buildings in the city. It allows the DOB to issue ICOs for parts of certain buildings where construction has already been completed. ICOs would replace temporary certificates and wouldn't have to be renewed every 90 days, as is currently required. Once the DOB issued a TCO, renewal applications had to be filed every three months until the project was completed and a Final Certificate of Occupancy was issued. Failure to properly renew the paperwork for a TCO could lead to enforcement actions from the DOB. Instead, the new ICOs will expire once

a permanent Certificate of Occupancy is issued.

In addition to reducing paperwork and eliminating inefficiencies, the new ICOs are intended to give commercial and residential tenants peace of mind by allowing them to move into a newly constructed space without having to worry about their temporary Certificate of Occupancy expiring or outstanding issues requiring DOB intervention. ICOs will also add much needed certainty for developers when securing financing for their projects.

The ICOs require comprehensive DOB field inspections before they can be issued. Residential buildings with fewer than four units, nonresidential properties shorter than five stories, mixed-use properties with fewer than four apartments, and parking garages are not eligible for the interim certificate.

Cuomo Announces Executive Order to Help Needy Renters

In May, the state legislature passed the Emergency Rent Relief Act of 2020 to help low-income renters make their monthly rent payments for up to four months. The program was funded by \$100 million of federal money. Critics claimed the legislation enabling the act was written far too narrowly, and that the window to apply for relief was too short and ill-timed. It opened just as New Yorkers were receiving the \$600-a-week unemployment checks from the federal government, which meant they were ineligible for rent relief.

As a result, the New York State Office of Homes & Community Renewal, which administers the relief program, had distributed just under \$40 million (\$39,977,021). In other words, \$60 million of federal rent relief has yet to be

allocated, with a deadline of Dec. 30 for its distribution.

In a recent announcement, Governor Cuomo said he will use his executive authority to expand the program's eligibility requirements to ensure more New Yorkers have access to rent relief. "The legislature passed a rent assistance bill. The rent assistance bill appropriated \$100 million, up to \$100 million, but had eligibility requirements on what income levels could qualify. We ran the program. The number of eligible applicants only brought us to \$40 million in rental aid by the parameters of the law. By executive order I'm going to change the law. I've spoken to the legislative leaders about this—reopen the application window, extend the eligibility requirements to help more New Yorkers." ◆

MANAGEMENT BASICS

Post Hurricane Evacuation Notices If Building Is in Evacuation Zone



The New York City Fire Department recently adopted rules implementing Local Law 103 of 2019. This law, which took effect on Oct. 6, 2019, requires apartment building owners (Group R-2 buildings and occupancies) within a hurricane evacuation zone, as designated by the Commissioner of the Office of Emergency Management (now New York City Emergency Management or NYCEM), to post a hurricane evacuation notice in a common area of the building.

The notice is intended to inform building occupants of the current hurricane evacuation zone designation for the building and the means by which building residents can determine the closest hurricane evacuation centers—namely, by calling 311 or viewing the online Hurricane Evacuation Zone finder operated by NYCEM.

The rule says the hurricane evacuation notice must be attached to the wall by adhesive or in a frame, displayed in an enclosed, locked bulletin board, or otherwise durably and securely posted.

Building’s Evacuation Zones

Hurricane evacuation zones are the areas of the city that face the greatest storm surge dangers. There are six zones, decreasing in level of risk from 1 to 6. To find your building’s evacuation zone, visit

<https://www1.nyc.gov/assets/em/html/know-your-zone/knowyourzone.html>.

On this page, you can access the NYC Hurricane Evacuation Zone Finder. This map lets you know whether your building is in a hurricane evacuation zone, if there is an evacuation order in effect, and where the nearest evacuation center is located.

Posters for Compliance

NYCEM offers two posters for each zone to comply with Local Law 103. The posters inform occupants of the hurricane evacuation zone for that building and how to find the closest hurricane evacuation centers.

The full poster contains information in 13 languages. And the small poster contains information only in English, Spanish, Chinese, and Russian. The small posters should be used in buildings in which it is known that only those languages are spoken. Print the poster for your building’s hurricane evacuation zone and post it visibly in a common area. The posters are available at <https://www1.nyc.gov/site/em/resources/zoneposters.page>.

Due Date

The FDNY rules take effect on Jan. 1, 2021. Owners of buildings within these zones have until April 30, 2021, to comply with the Hurricane Evacuation Notice requirement. ♦



FDNY-ISSUED HURRICANE WEATHER EMERGENCY PREPAREDNESS INFORMATION

In some extreme weather emergencies, such as hurricanes, the city may order evacuations in areas. If you live in a high-rise building, especially on the 10th floor or above, stay away from windows in case they break or shatter, or move to a lower floor.

Advance preparation:

- Before a coastal storm or hurricane, find out if you live in one of New York City's hurricane evacuation zones.
- Prepare your home and vehicles. Secure outdoor objects, close windows and exterior doors securely, move valuable items to upper floors, and top off your vehicle and generator with fuel.
- Have your Go Bag ready.
- Know where you will go in the event an evacuation order is issued. Stay with family or friends or call 311 for information before, during or after the storm.
- If ordered to evacuate, do so as directed. Use public transportation if possible. Keep in mind that public transportation may shut down several hours before the storm arrives.
- If you need to use the elevator to evacuate and are in an evacuation zone, be sure to evacuate before elevator service is discontinued to protect the elevators from flooding. Building owners are required to post signs in the building lobby or common area in advance (if possible) of a weather emergency if they will be discontinuing elevator service. Advance notification of the building owner/management may help ensure you receive appropriate notification.
- Be prepared for a power interruption by charging your cell phone and other portable devices and adjust the refrigerator setting to a colder temperature.

During the storm:

- Stay indoors.
- Call 911 if you have a medical emergency or are in danger from physical damage to your building or apartment, but be aware that an emergency response may be delayed or unavailable during the storm.
- If you are trapped inside by rising waters, move to a higher floor, but don't retreat into an enclosed attic unless you have a saw or other tool to cut a hole in the roof if necessary. Call 911 and report your situation. Wait for help. Do NOT try to swim to safety. Do not enter a building if it is surrounded by floodwaters.
- Stay away from downed power lines. Water conducts electricity.

BUILDING MANAGEMENT CALENDAR

Key dates to add to your to-do list: Jan. 15 through Feb. 15, 2021.

1/15 FRI

Deliver 'Annual Notice: Lead Poisoning & Window Falls' to tenants.

Today is the last day to deliver the "Annual Notice: Protect Your Child from Lead Poisoning & Window Falls" to all tenants in your building.

Deliver fire & emergency safety plan to building employees and current occupants.

Today is the last day to distribute a copy of your building's fire & emergency safety plan (FEP) to building employees and current occupants of every apartment if you opt to deliver the FEP with your "Annual Notice: Protect Your Child from Lead Poisoning & Window Falls." You don't have to deliver the FEP now if you distributed it to building employees and occupants in October 2020.

Protest 2020–21 real property tax assessment.

Today is the first day to apply to the city's DOF for a reduction of the 2020–21 tax assessment for your property. Applications for Class 2 and Class 4 properties can be filed up to and including March 1. Applications for Class 1 properties can be filed up to and including March 15.

1/18 MON

Use Dr. Martin Luther King Jr. Day building schedule.

Dr. King's Birthday is a Service Employees' Union (Local 32BJ) contract holiday. It's also a Sanitation Department workers' holiday, which means there's no garbage pickup or street cleaning.

2/1 MON

File J-51 application.

The first filing period in 2021 for filing J-51 tax abatement and exemption applications begins today. Applications can be filed during this period, up to and including March 15, 2021.

2/12 FRI

Use Lincoln's Birthday building schedule.

Lincoln's Birthday is a Sanitation Department workers' holiday, which means there's no garbage pickup or street cleaning.

ANNUAL INDEX

If you missed any 2020 issues of the INSIDER, just log on to our website, www.ApartmentLawInsider.com. There, you can download PDFs of past issues from our Archive, or you can click on the article titles below:

FEATURE ARTICLES**FEATURES**

- Set Occupancy Benchmarks to Prevent Improper Pass-Ons
- Old Rules vs. New Rules: Anatomy of HSTPA's Effect on Rent Increases
- CDC Issues Eviction Moratorium Until Dec. 31
- Chief Judge Pauses Execution of Eviction Warrants Until October
- New Law Extends COVID-Related Eviction Protections
- RGB Issues Rent Freeze Amid Pandemic
- How to Comply with Order Extending Eviction Moratorium
- How New Emergency Paid Leave Benefits Apply to Building Service Workers
- COVID-19 Outbreak: Building Management Best Practices
- How to Comply with DOB's Stricter Façade Inspection Requirements
- Three Ways to Prepare for Covert Fair Housing Testers
- The Climate Mobilization Act: What You Need to Know
- How to Comply with FDNY Rules for Fire Safety Plans, Notices

MANAGEMENT BASICS

- Local Law 55: Perform Indoor Allergen Hazard Inspections by Dec. 31
- Local Law 69: File Annual Bedbug Report by Dec. 31
- DHCR Increases Air Conditioner Rent Surcharge for 2020-21
- Know Your Heating Obligations as 'Heat Season' Begins
- Post Large Building Energy Efficiency Rating Label by Oct. 31
- Perform Gas Piping Inspection for Community District 1, 3, 10 Buildings by Dec. 31
- Notify Struggling Tenants of Rent Relief Program
- Follow New Procedures for OATH/ECB Hearings
- Follow Phase 2 Guidance for Showing Apartments
- File 2020 Rent Registrations Online by July 31
- Façade Amnesty Program Begins July 1 for Limited Time
- DOB Modifies Tenant Protection Plan Form
- DOF Extends RPIE Statements, Storefront Registry Filing Deadline to July 1
- State, DOB Halt Non-Essential Construction Due to COVID Crisis
- Follow HSTPA Security Deposit Rules to Minimize Consumer Fraud Complaints
- How to Comply with DOB's Gas Piping Inspections Requirements

NEW LAWS & REGS

- Mayor Expands City's Green New Deal to Rent-Regulated Buildings
- Local Law 31: HPD Adopts Five-Year Lead Paint Testing Rules
- How to Comply with LL 110 for Posting, Distributing Notices of Violations

RENT INCREASES

- DHCR Issues Reasonable Cost Schedule for MCIs
- RGB Favors Rent Freeze in Preliminary Vote
- RGB Issues Income & Expense Study, Annual Meetings to Continue
- IAls Made Prior to HSTPA Enactment Not Limited to \$15,000 Cap
- How to Collect 2020–21 MBR Increases for Rent-Controlled Units
- Use DHCR's Online Service for New IAI Reporting Requirements

COURT WATCH

- Chief Judge Lifts Suspension of Eviction Cases
- New Filing Rules Aim to Manage Expected Deluge of Eviction Cases
- Airbnb and City Settle Lawsuit Over Host Disclosure Rules
- A Market Reinvigorated: The Impact of Regina Metropolitan on the Rental Building Market
- Chief Administrative Judge Announces Statewide Eviction Ban

VIOLATIONS

- Fines Doubled for Not Correcting 'Immediately Hazardous' Violation

DEPARTMENTS

DOS & DON'TS

- Think Twice Before Upgrading to Biometric Entry System

Q & A

- Must You Inspect for Lead Paint When There's No Child or Peeling Paint in Apartment?
- Will Insurance Cover COVID-Related Business Losses?

IN THE NEWS

- District Attorney Candidate Wants to Prosecute Owners for IAI Fraud
- Gov. Cuomo Extends Commercial Eviction, Foreclosure Ban until January
- New Tenant Resource Portal Helps Renters Avoid Eviction
- DOB Launches Boiler Violation Search Portal
- DHCR Issues Modified Renewal Lease Form
- NYC Water Board Freezes Rates for FY 2021
- City Council Speaker Airs Concerns Over Canceling Rent

- DHCR Extends Processing and Procedures Deadlines
- State Lawmakers Seek to Extend Eviction Moratorium
- NYS Coalition Calls for \$10B for Emergency Housing and Rental Assistance
- Judge Temporarily Blocks State Guidance Barring Brokers' Fees
- City Comptroller Proposes 'Tenant Bill of Rights' Flyer with Every Lease
- NYC's Right-to-Counsel Program Expands to Five More Neighborhoods
- Bill Requires Units for Homeless in City-Backed Projects
- Industry Group Asks City to Help Pay for Lead Abatement

MODEL TOOLS

- Have Tenants Fill Out Occupancy Statement
- Sample Allergen Hazard Inspection Form
- Have Tenants Unable to Pay Rent Sign Declaration
- RGBO #52 Rent Computation Form for Renewal Leases
- Chart Comparing Possible Rent Increases
- 2020-21 A/C Rent Surcharge Charts
- DHCR's Reasonable Cost Schedule for MCIs
- Use Agreement to Let Tenant Apply Security Deposit to Past Due Rent
- City-Wide Agencies' Policy Changes Due to COVID-19

CONTRIBUTORS' CORNER

- Did COVID Shutdown of Renovation Excuse Delay?
- Can Buyer of Building with Regulated Unit Back Out of Deal After HSTPA?
- Court Declines to Stop Illegal Parties During the Pandemic
- Court Affirms Tenants' Choice of Forum for Rent Overcharge Claims
- Court Strikes HSTPA's Retroactive Application in Overcharge Cases
- Demolition: One of the Last Ways to Deregulate a Building
- Complying with Paid Leave Law During COVID Outbreak: Federal Law
- Providing Paid Leave During COVID Outbreak: NY Law

LANDLORD v. TENANT

For highlights of the year's housing court, DHCR, and Environmental Control Board decisions, look on our homepage under Departments and click on [Landlord v. Tenant](#). For a complete database of case summaries of more than 50 monthly landlord-tenant decisions going back 25 years, see the site of the *Insider's* sister publication, www.LandlordvTenant.com.