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Understanding Single-Room Occupancy Laws

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Single-room occupancy housing, or more commonly called SROs, exist throughout New York City. When purchasing such a dwelling without the proper paperwork, you will not be able to obtain a permit to do renovations, a buyer cannot evict the residents who are rent-regulated tenants, and the owner may be required to maintain the upkeep for the tenants in possession which may include maid service and changing the tenants' linens. Most of these dwellings contain single rooms without a bathroom, kitchen or shower which resides on another side of the floor in a shared capacity. SRO buildings are a relic of a past city hanging onto to a way of living that has long been abandoned. This article attempts to explain the laws of single-room occupancy buildings standing in the shoes of the purchaser or owner attempting to turn these dwellings into one-family or multi-family housing without restrictions.

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Governing SRO Laws

The laws governing SROs are divided among the Administrative Code, Multiple Dwelling Law (MDL), and the Rent Stabilization Code (RSC). As a result, SROs exist in apartment hotels, lodging houses, rooming houses with fewer than 30 units, and residential buildings. While certain laws seek to hold steady the number of SROs, the law has also placed barriers upon their construction and conversion. The NYC Administrative Code (Admin. Code) §27-2077(a) states, "no rooming unit which was not classified…prior to May fifteenth, nineteen hundred fifty-six, shall be created in any dwelling, whether such conversion is effected with or without physical alterations."[1]

Qualifying as an SRO Tenant

The MDL §4(16) defines an SRO as being "the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment." The bulk of the law describing the basic requirements for an SRO is to be found in MDL §248,[2] a statute specifying everything from towels to fire proofing in such dwellings.

While the overwhelming majority of SRO units in the city are occupied by single persons, MDL §248(12) does allow two adults, an adult plus a child who is 12 years old or more, an adult plus two children under 12 (but over two years old), or the previous combinations plus any number of toddlers under two years old. That said, the social welfare agencies strongly discourage any minors being in occupancy at all.

Under RSC §2520.11(g), for coverage, an SRO building must house six or more units, have been built on or before July 1, 1969, where the rent at that time was not greater than $88 weekly, or $350 monthly, and is occupied by a permanent tenant. The RSC covers both MDL class "A" and "B" dwellings, provided the dwelling meets the requisite demands of time and rent charged.[3] Under MDL §248, the building owner must provide certain necessary amenities such as heating, lighting, available laundry services, means of egress for each sleeping room, hot and cold water in the restrooms, a competent manager, and competent watchmen in charge of the premises.[4]

Permanent Tenants

Under RSC §2520.6(j), individuals and their families may become permanent tenants in one of three ways: Residing in a "hotel" continuously for six months;[5] requesting a lease of six months or more, which the landlord must then furnish within 14 days; or residing in a property pursuant to a lease of six months or greater.[6] When an occupant becomes a permanent tenant, owners must then take caution when they seek to alter, demolish, or convert the building that they comply with the Administrative Code, with specific regard to obtaining a Certificate of No Harassment (CONH). However, Admin. Code §26-521 combines with the RSC to prohibit evictions of SRO tenants where the tenant has lawfully occupied the premises for 30 consecutive days, while permitting eviction prior to 30-days occupancy.[7]

Where an SRO unit comes under rent stabilization, the usual rules requiring a tenant to use the premises as his/her primary residence, refrain from subletting, and pay rent on time come into play. If the unit is not subject to rent stabilization, the owner has no motivation to recover the unit on any theory more elaborate than that the term for the unit has simply come to an end.

Certificate of No Harassment

The obtainment of a certificate of no harassment is the gateway into turning a highly regulated, alteration-prohibited building into a free-market class A multiple dwelling. It should be noted that even after a certificate is granted, any current tenants retain their rent-regulated status, but vacant apartments are no longer

rent regulated and can be rented as free-market apartments once construction into Class A apartments has been completed.

An owner's ability to convert or demolish an SRO is also contingent upon the owner receiving a CONH from the New York City Department of Housing Preservation and Development (HPD) under Admin. Code §27-2093, unless HPD grants the owner a waiver, or exemption.[8] Harassment is defined as the act to evict, or attempt to evict any permanent tenant by engaging in conduct that interferes with the tenant's enjoyment of the premises, or engaging in, or threatening to engage in any other conduct that would induce the tenants to vacate the premises.[9]

In order to obtain a CONH, the owner of the SRO building must apply to HPD. Upon receiving the application, the commissioner publishes notice for seven days to notify the occupants, if any, and the owner that an investigation will commence. This gives the occupants 30 days to give comments to HPD regarding their living conditions, specifically whether the occupant feels that a form of harassment has taken place. Importantly, the investigation looks to the three years prior to the application to determine whether harassment has occurred, and all occupants, current and former, are able to come forth to allege harassment.

Harassment hearings take place before the Office of Administrative Trials and Hearings (OATH) without the formal rules of evidence.[10] Unless the owner has obtained affidavits from all present and findable recent tenants that no harassment has taken place, the bulk of these hearings deny issuing the CONH.[11]

Upon the conclusion of the comment period and investigation, the commissioner may grant the CONH, request a hearing to determine if harassment has occurred, or deny the CONH outright, without a hearing. Moreover, the commissioner has the right to rescind or suspend any CONH if there is a reasonable belief that harassment has occurred after the granting of the CONH, but prior to "substantial work beginning."

Denial of the CONH results in the owner being prohibited from acting to convert, or demolish the building for 36 months, at which point the owner would be able to submit another application.[12] Absent the above described affidavits, CONHs on such reapplications are exceedingly rare. Martha Washington Tenants Ass'n v. Roberts,[13] holds that a hearing on an application for a CONH is not mandatory so long as HPD conducts an investigation of the tenant's charge of harassment. In judicial review of an adverse finding, the owner would have to demonstrate to the court that the agency was arbitrary and capricious or was unsupported by substantial evidence—[14]an exceedingly difficult standard to satisfy.

The city states that it takes three to six months to get a CONH, but only if the application is complete. However, the city is extremely exacting as to what constitutes a complete application. Thus, if the owner cannot provide the city with the name and social security number of three years of building managers or affidavits of no harassment from the tenants for that same period, it can delay the application. If the building is of an age that it does not have a certificate of occupancy (CO), then the application will add the time it takes for the owner to get a "letter of no objection" (LNO) from the Buildings Department. The LNO is essentially not a "letter" at all, but a document that stands in stead of a certificate. It tells HPD the legal configuration and use of the property which HPD compares to the actual use, which the application must set forth. While the city claims an LNO takes only a few days to issue, experience shows that it can take up to more than a month.

If an owner shows a good faith intention to demolish a hotel in order to build a new commercial building on the site, after offering a relocation plan, the CONH is properly issued.[15] The mere fact that there are nonhazardous violations in a building seeking a CONH will grant the owner the CONH, so long as the owner can show ongoing maintenance of essential services.[16]

When CONH's Are Denied

The Administrative Code is clear in outlining the procedural steps that an owner must take to obtain a CONH. However, even for clear law, there are very few cases construing it.

There is a statutory presumption that acts of harassment are with the intent of causing lawful occupants to vacate their units or surrender their rights in relation to occupancy. When such a pattern was the doing of a former owner, without regard to the new owner's fault, or lack of fault, acts of harassment by the old owner, are attributable to the new owner. Thus, for example, if the former owner failed to provide heat, and other essential services during the three-year inquiry period, the new owner will be denied the CONH.[17]

In HPD v. Zimmerman,[18] it was held that "new" SRO owners must rebut the statutory presumption that acts of harassment committed by old SRO owners were with the intent to cause the lawful occupants to vacate their units or surrender their rights in relation to occupancy. Without regard to the new owner's fault, or lack of fault, acts of harassment by the old owner were attributable to the new owner that the acts of harassment committed by the old owner were with the intent of causing tenants to vacate and as such, the new owner was properly denied a CONH. The petitioner proved the previous owner failed to provide heat, and other essential services during the three-year inquiry period. Upon sale of the building to the new owner, denial of the CONH was warranted.

Where the building includes failures to maintain basic services such as the failure to keep public bathrooms and hallways clean, eradicate vermin, repair holes in the ceiling and prevent overcrowding, and there are numerous violations in the building, harassment is properly found.[19] Where there is evidence of deplorable physical conditions within the premises or and where the landlord attempted to intimidate the tenants into leaving, HPD appropriately refuses a CONH.[20] When the landlord makes repeated buy-out offers making a tenant feel threatened, so too, HPD properly refuses a CONH.[21]

Admin. Code §27-2093 permits HPD to rescind or suspend certificates after they have been issued if there is reason to believe harassment occurred prior to the commencement of substantial work.[22]

In HPD v. Gill,[23] it was held that commencing the conversion of an SRO into a Class A apartment, while the certificate is pending and has not yet been obtained, creates a reasonable inference of harassment. In Gill , respondent purchased the building and within weeks, removed over 26 tenants, and began to convert the building after the application had commenced, but prior to its conclusion.

Additionally, OATH decisions have weighed in on rescission, and suspension of CONHs, though these decisions have not yet gone on appeal. Admin. Code §27-2093 permits HPD to rescind or suspend certificates after they have been issued

if there is reason to believe harassment occurred prior to the commencement of substantial work.

In HPD v. 331 West 22nd Street,[24] substantial work was defined as commencing "upon payment of the first advance by a lender on building loan contract which is financing the alterations or demolition for which a certificate of no harassment was granted." Further, substantial work has occurred "upon an 'actual expenditure' of more than fifty percent of the total cost of alteration or demolition."

Lastly, OATH has sought to clarify other SRO-related issues. One issue being, for example, that there is no time frame within which HPD must complete its investigation. In HPD v. Fenelon,[25] there was a two-and-a-half-year lag between the filing of the application and an OATH hearing. However, it was held that respondent was barred for three years from the time of final determination, and not the filing of the application, when the certificate was denied.

Vacating an SRO Building

The same laws used to evict rent-regulated tenants using their apartments or occupancy illegally applies to SROs. This includes eviction through non-primary residence, illegal sublet, demolition, chronic nonpayment, nuisance, and all other laws listed in the rent stabilization code.

Where an SRO unit is subject to rent stabilization, it is subject to being recovered for the owner's own use, just like any conventional apartment which would allow a property owner to recover all the units in the building for his or her private or family use once a certificate of no harassment has been issued.

Conclusion

Single-room occupancy laws are one of the most misunderstood and least known regulatory laws. At the same time, there is a record number of filings to convert these buildings into Class A apartment houses. This article attempts to navigate the SRO buyer, owner and practitioner to their desired goal.

ENDNOTES:

1. Admin. Code §§27-2077(a)(2) & (3).

2. Inside New York City, the Multiple Dwelling Law applies. Outside New York City, municipalities may elect the Multiple Dwelling Law, a statute lacking an SRO provision.

3. Gracecor Realty, v. Hargrove, 90 N.Y.2d 350 (1997) (holding that the RSC may cover class "B" units).

4. MDL §248(15) really does specify that these two workers must be "competent," a rare requirement in the law.

5. "Hotel" is something of a technical term. It requires a front desk and certain other amenities, but bears little other resemblance to the average reader's idea of a hotel.

6. RSC §2520.6(j).

7. RSC §§2524.3(a) & (b); Admin. Code §26-521(a)(1).

8. Admin. Code §27-2093(f)(1); See also, NYCRR §10-02 – §10-11.

9. Id.

10. Id.

11. Developers frequently require such affidavits and a vacant building prior to taking title to SRO buildings.

12. Id.

13. 292 A.D.2d 225(1st Dept. 2002).

14. CPLR 7803.

15. Baba v. 113 Bldg. Corp., 210 A.D.2d 6 (1st Dept. 1994).

16. Breslin Tenant Assn'n v. HPD, 67 A.D.3d 522 (1st Dept. 2009).

17. HPD v. Zimmerman, OATH Index No. 347/05 (Oct. 4, 2004).

18. OATH Index No. 347/05 (Oct. 4, 2004).

19. Hersch v. HPD, 44 A.D.3d 525 (1st Dept. 2007).

20. Matter of 235 Hotel v. HPD, 309 A.D.2d 587 (1st Dept. 2003).

21. Vaughan v. Michetti, 176 A.D.2d 144 (1st Dept. 1997).

22. HPD v. 331 West 22nd Street, LLC, OATH Index No. 912/06, mem. Dec. (Dec. 29, 2006).

23. OATH Index No. 2729/09 (July 30, 2009).

24. OATH Index No. 912/06, mem. Dec. (Dec. 29, 2006).

25. OATH Index No. 1525/04 (Oct. 6, 2004).